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SENATE COMMITTEE REPORT
FIRST COMMITTEE OF REFERRAL

DATE: 2/3/92
2/5/92-add Jud

Judiciary
FURTHER: Finance

Date of 5-Day Notice: _____
(in accordance with Uniform Rule 23)

DATE TURNED
INTO OFFICE: _____

Resources Committee considered SB 383

"An Act relating to air quality control and the prevention, abatement, and control of air pollution; relating to civil and criminal penalties, damages, and other remedies for air quality control violations; relating to use of the oil and hazardous substance release response fund; and providing for an effective date."
and recommends:

replace with _____ CS _____ (_____)

attaches amendment(s)

same title
 new title
 technical
title change
(HB only)

adopts _____ Letter of Intent

further referral to the _____

do pass

do not pass

no recommendation

individual recommendations

NEW FISCAL NOTES: Dept/Date

zero fiscal notes _____

fiscal notes _____

appropriation--no fiscal note

PREVIOUS FISCAL NOTES: Dept/Date

Governor's bill with fiscal notes:
zero fiscal notes _____

fiscal notes _____

DO PASS:

OTHER RECOMMENDATIONS:

Chair: Signature and Recommendation

QUESTIONS ON SENATE BILL, 383

Q: When will EPA promulgate its final regulations governing state air permit programs? How can this Legislature finalize and adopt this bill without seeing the final EPA regulations? I understand that at least four states consider the lack of EPA's final regulations a serious enough impediment that the states have filed a notice of intent to sue EPA (New York, Connecticut, Maine and Massachusetts). If the Legislature decides to make as many improvements as possible to this legislation during the present session, and then reintroduce the improved bill and adopt it early in 1993, wouldn't the department be able to meet the November 15, 1993 deadline for submitting a complete program to EPA? Why couldn't the department get started now on developing draft regulations, so that not all of the regulation drafting work will remain to be done after adoption of the statute?

Ans: We cannot tell when EPA's final regulations will be out; all we know is that they are still under review at OMB, and have been for some time. Apparently there are several points that have turned out to be highly controversial.

SB 383 has been drafted based on the fairly detailed federal statute, placing as little reliance as possible on EPA's draft regulations, and deferring until the state regulatory stage the decisions that cannot be made until EPA's final regulations are available.

If the Legislature were to indicate it wishes the department to get started now on developing draft regulations, instead of awaiting adoption of the state air bill, the department could do so. That would make it possible for Alaska to meet the November 1993 deadline for submitting a complete program to EPA (including adopted regulations), even if final adoption of the state air bill is held over until the 1993 Legislature and final adoption occurs by April or early May of 1993. Under such a plan, the department would be ready to send proposed regulations out for public comment as soon as the legislation is adopted.

Q: We understand that under the Clean Air Act Amendments of 1990, the federal LPA will be regulating a lot more kinds of chemical air pollutants and a much greater variety of sources of air pollution. Does SB 383 allow the Department of Environmental Conservation (ADEC) to regulate even further than the federal program requires of states?

- more kinds of sources/facilities?
- more kinds of chemicals (air contaminants)?
- more stringent emission limits than EPA's?

- more stringent ambient standards than EPA's?

Ans: Yes, to all of the above, but the existing state air quality statutes (at AS 46.03) already give ADEC authority to exceed federal regulation of air contaminants in all of the foregoing ways.

Q: With the extensive new regulation EPA will have to do under the 1990 amendments, why will there any longer be a need for ADEC to have authority to regulate air pollution sources beyond those the state will have to include in its program as a result of EPA's new regulations of more and more air pollution sources and air pollutants?

Ans: There would be almost no need for the state to regulate types of sources or types of air pollutants beyond those that EPA will be regulating. Even in the past, under EPA's extremely limited regulation of hazardous air pollutants (only 5 chemicals were regulated by EPA), the state has only regulated two air pollutants not regulated at the federal level, ammonia and hydrogen sulfide. Congress has already identified 189 hazardous air pollutants which EPA must regulate, and EPA has authority to proceed with regulating more than those; so the need for Alaska, with its very limited industry, to regulate

hazardous air pollutants that EPA does not, will become rare to nonexistent in the future.

Q: How much additional staff (and money to fund that staff) is the Administration anticipating, for each year during the next five years, to implement the program envisioned under SB 383? What fraction of this additional new staffing (and funding) is caused by the authority to regulate more extensively than the federal law requires?

Ans:

Q: What air pollutants and types of sources does the department expect to need to regulate, beyond those which the federal program will require states to regulate?

Ans:

Q: Please explain what is meant by "risk assessments" in proposed § 46.14.010(a). If these are health-based standards which the department proposes to develop, what scientific capability is there within the department to perform this type of analysis? What additional scientific staffing will be needed and at what cost per year, for each of the coming five years?

Ans:

Q: Please explain exactly how the department would utilize the results of "risk assessments" in setting standards; and especially explain why the standards and limitations (page 2, line 2) could be set based on risk assessments only, rather than on a combination of factors that include available technology and economic feasibility?

Ans:

Q: If Alaska sets source emission standards that are more stringent than the federal standards, or for more sources than

the federal program requires states to regulate, what will be the effect on the competitive position of Alaska industries when they are forced to compete against industries which do no more than meet the federal requirements?

Ans:

Q: Referring to subsection (d) of proposed § 46.14.200 (top of page 3), under what circumstances would the department wish to have the flexibility not to exempt a source that the EPA administrator has exempted? In other words, why should we not change the words "may exempt" to read "shall exempt"?

Ans:

Q: Please list all the types of functions the department will have to implement under this program, for which the department does not anticipate issuing regulations. For example, referring to proposed § 46.14.210(b), why would it ever be necessary for the department to issue a permit or enforce provisions of the statute, unless the department had

previously promulgated regulations governing the category of source and type of air contaminant involved?

Ans:

Q: It is my understanding that the federal statute requires state programs to allow facilities to make small changes without going through a modification of their permit, so long as the changes do not cause the emission levels in the existing permit to be exceeded. How much flexibility will a facility with a permit have to modify its operating procedures or make small mechanical changes without going through the process of obtaining a modification of its permit?

Ans: This is one of the subjects that has been hotly disputed in the debate that is going on at the federal level (and which has contributed to the delay in the issuance of EPA's final regulations). We will not know the answer to this until EPA's final regulations are published. SB 383 attempts to accommodate this uncertainty by requiring the state's permit procedures to provide maximum flexibility in the operation of the facility; refer to § 46.14.210(a)(6). Absent EPA's final regulations, we cannot do more than this in the drafting of

this legislation, but will have to take care of this in the drafting of the state's regulations.

Q: It appears that this expanded regulatory program will affect quite a few owners of facilities that never have had to deal with air operating permits before. Referring to proposed § 46.14.220, why should we not give facility owners the entire 12 months after the date their facilities become subject to a regulatory requirement to submit their applications, rather than allowing the department to set a shorter time limit, as now appears at page 5, line 6?

Ans:

Q: Referring to the department's processing of permit applications, specifically proposed § 46.14.225, why does the department need 18 months to process an application for an operating permit? Why should the statute not be changed to limit the department to 6 months after receipt of a complete application?

Ans:

Q: I understand that the federal statute gives a permit applicant the benefit of a "shield" from being in noncompliance with the requirement to have an operating permit, once the facility owner has turned in a complete application. Surely the department will be deluged with a large number of permit applications during the startup phase of this program. Why should SB 383 not contain provisions defining when an application is considered "complete," and a provision setting a certain time limit (such as thirty days) after which the application will be deemed complete for purposes of the shield if the department has not given any response to the applicant by that time? It is my understanding that such a provision is at least encouraged, if not required, by the draft EPA regulations.

Ans:

Q: Why should the bill not require the department to give preferential priority in application processing and permit

issuance to those applications that are for construction of new facilities and modification of existing facilities, inasmuch as they must have a permit in order to proceed, whereas existing facilities can continue to operate once they have turned in an application?

Ans:

Q: Is it your reading of proposed § 46.14.230 (review of permit action), that a person who had not even participated in the public comment process on a draft permit would be able to seek an adjudicatory hearing challenging the permit, and after that, judicial review? Why should the right to seek review of permit action not be limited to those who come forward and comment during the public comment process? Shouldn't the department have an opportunity to hear the comment, and attempt to respond to the comment and resolve the problem if a genuine problem has been raised, prior to issuance of the permit?

Ans:

Q: Concerning general operating permits (proposed § 46.14.240), why should we slow down the state's process by requiring EPA approval of a master general permit, rather than simply relying on the 45 day window within which EPA can object to any proposed permit? Secondly, if a general permit has been issued, and a individual facility owner then wishes to have his facility come within that general permit, why should it not be enough for the facility owner to submit a complete application to the department (on forms the department would provide), with the department having 30 days within which to notify the applicant if the facility does not qualify to come under that general permit or notify the applicant that the application is not complete? In other words, why should the department be burdened with having to respond to every application for a general permit?

Ans:

Q: In proposed § 46.14.245 (objection by federal administrator), what role does the department intend to play in cases where the EPA administrator objects to a particular permit? Will the department be assisting the permit applicant to promptly resolve the objections from EPA, so that the permit can be

issued? Why should there not be a provision in the bill that requires this of the department?

Ans:

Q: Referring to proposed § 46.14.245 (objection by administrator), if a petition is filed under subsection (b) or if the federal administrator has objected to the permit, my understanding of the federal statute is that Congress intended the "shield" provided by the application to continue in effect during the pendency of any such petition or objection. Where in the words of the bill is it made clear that there is a continued entitlement to the protection of the shield during the pendency of any petition or federal objection?

Ans: That is not expressed in the present text, but could be added.

Q: I understand that the permit fees collected must be sufficient to support the operating permit program and the small business assistance program required by the amended Clean Air Act. How does the department presently envision the permit fee program will be structured? For example, how will the department assure that, as between different kinds and sizes of sources

and facilities, the fees charged are equitable? How will the department assure that the permit fee for each permit bears a reasonable relationship to the complexity of the permit and the workload placed on the department for processing that permit? What mechanism will there be for a permit applicant to negotiate with the department, to recommend and obtain department adoption of technologies, monitoring instrumentation and procedures, and the like, which will limit the permit fee but still meet the actual requirements? Exactly what costs will be included as "indirect costs"?

Ans:

Q: The late payment penalty provision (proposed § 46.14.255) is not federally mandated in state programs, is it? Won't there be sufficient incentive for facility owners to make timely payment of their permit fees without a penalty provision? For example, if the fee is accruing interest at the statutory rate, and the facility owner knows he cannot get his permit renewed without paying the fee, and knows that the department can take a short and simple debt collection action against him in court, isn't there sufficient incentive without this late payment penalty provision?

Ans: The federal statute does not require any late payment penalty provision in state air permit programs. The only reference to late payment penalty provisions in the federal statute is that EPA will have that available in states where EPA is implementing the program because the state has not done so. In the House version of the bill, the Administration has already agreed to reduce the 50% late payment penalty to one that increases at the rate of 5% per month of lateness, up to a maximum total of 25% of the amount of the permit fee. However, the department certainly could collect late permit fees through a simple collection action in state court; this is the kind of work that is routinely and often done by municipalities collecting late sales taxes, and much of the cost would be borne by the defendants, because the court will award attorney fees and costs against them under Civil Rule 82.

Q: Referring to proposed § 46.14.260 (duration of operating permits), why should any permit (other than those for temporary locations, under § 285) have a duration of less than five years? Permits will be subject to reopening to insert any new regulation that comes down from EPA if the permit has a remaining term of three years or more. Adequate control over the actual performance of a facility can surely be maintained by the department through the compliance schedule

that will be part of any permit for a facility that is not already in compliance with the emission limits in its permit. Why is there any need for permits with a shorter duration than five years?

Ans:

Q: Regarding the reopening of permits to insert new emission standards (proposed § 46.14.265), why should the permits susceptible to reopening not be limited to those with a remaining duration of three years (as I understand the EPA draft regulations allow)? If we are not careful how we structure this legislation, some permits may be almost continually in the process of reopening and modification. Could we not assure some undisturbed period of time on which facility owners could rely once they have a permit? Why should we require permits to be reopened sooner than 18 months after their issuance, renewal, modification, etc.?

Ans:

Q: It is my understanding that many environmental laws, at least at the federal level, allow for a brief period of excursion beyond the emission limits at the time of plant startup or shutdown, and a brief period of excursion above emission limits due to sudden and unavoidable equipment malfunction as long as the equipment has been responsibly maintained. Where does the bill provide for this kind of realistic relief for facility owners?

Ans: It does not, but such a provision could be added.

Q: Does the federal statute require that state programs have an administrative penalties provision (proposed § 46.14.295)? If not, why is this section in the bill, considering that there are major daily civil penalties, plus criminal penalties, for violations?

Ans: No, the federal statute does not require state programs to include an administrative penalties provision. EPA, when it is enforcing its air program in states which have not adopted an air program, will have administrative penalties available, in addition to civil and criminal penalties. But state programs are only required to have civil penalties (the federal statute specifies that the maximum daily civil penalty must be no less than \$10,000 per day); and state programs must

have criminal penalties (the draft EPA regulations specify that the maximum daily criminal penalty must be no less than \$10,000 per day). The administrative penalties provision is here in SB 383 because the Department of Law wants it as an additional enforcement tool.

Q: In the small business assistance program, there is a compliance advisory panel (proposed § 46.14.430). Considering the nature of the assistance intended to be provided to small businesses, it appears that the membership of this panel as described in the bill is not going to provide the kind of capability needed to do the job. I would have supposed that such a panel should be made up of people with scientific, technological, engineering, and environmental economics backgrounds related to air pollution. If you were able to rewrite the text governing the membership of this compliance advisory panel, what kinds of qualifications would you set for panel membership, and how would you like to see this text rewritten?

Ans:

Q: Concerning municipal or local air quality programs, why do municipalities or local air quality districts need authority to have programs that are more stringent in any way than the state's program? Reference is to proposed § 46.14.500(f). Which municipalities now have their own air quality programs? Of these, which have requirements that are more stringent than those in state regulations?

Ans:

Q: Concerning civil penalties for air pollution violations, is it true that the Department of Law has been utilizing an internal document (not subjected to public review and comment and promulgated as a regulation) to determine what percentage of the maximum daily civil penalty to seek in a given instance of air quality violation? Why should the department not be required, by statute, to promulgate civil penalty assessment criteria or policies as a regulation, just as has been proposed in the section on administrative penalties?

Ans: Yes, the Department of Law has been utilizing EPA's air program document containing EPA's penalty assessment policies; and EPA did not publish this document through the regulatory process either. The Administration has no objection, however, to having a requirement added to SB 383 that civil penalty

assessment criteria or policies be adopted through the regulatory process.

Q: Why are sections 20 and 21 of the bill (page 27) needed, and what will be the consequences of this cross-linkage into the array of other statutes governing hazardous substances? Why should the Legislature authorize a raid on the 470 fund for purposes related to air contaminants?

Ans:

Q: What other provisions are there in SB 383 that go beyond what the Clean Air Act requires in state programs, besides those about which I have already asked?

Ans:



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

SB383

February 3, 1992

*The Honorable Richard I. Eliason
President of the Senate
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182*

Dear President Eliason:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to air quality and the prevention, abatement, and control of air pollution. Passage of this bill is necessary if Alaska is to maintain primary jurisdiction in the implementation of the air quality program, thus avoiding a federal takeover. Moreover, Alaska must restructure its air permits program by November 15, 1993, or the federal government may withhold federal highway money and other federal money.

At present, the air pollution control program in the Department of Environmental Conservation (DEC) consists of 11 statutory provisions codified as AS 46.03.140 - 46.03.245. Those provisions were enacted in 1971 and have become somewhat dated. This bill repeals those sections entirely and places state air quality law in a new chapter, AS 46.14. The bill, if enacted, would update existing air quality law to reflect changing needs in the state and to respond to new federal air quality requirements. This letter briefly describes the key areas of the bill.

First, the bill, if enacted, would reestablish and enhance the state's existing authority to establish emission controls and to classify sources of air pollution (see proposed AS 46.14.010 - 46.14.020).

Next, the bill would create an emission control permit program designed to meet the criteria established in the 1990 Clean Air Act. The bill would expand the state's existing authority regarding permits for facilities already subject to existing

*The Honorable Richard I. Eliason
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regulations. Further, it establishes for the first time the state's authority to issue operating permits for smaller facilities that will be subject to the new chapter. The bill contains a variety of sections establishing the parameters of that new permitting program. See proposed AS 46.14.200 - 46.14.295.

A significant aspect of the new permitting program is that the program must be financially self-sustaining. Section 502(b) of the federal Clean Air Act (42 U.S.C. 7661a(b)) sets out the "minimum elements of a permit program to be administered by any air pollution control agency." One of the required elements is an obligation to collect an annual fee from permittees adequate to pay for all direct and indirect aspects of the permitting program.

The federal law also restricts the use of fees, and any interest or penalties on them, collected by the department. Under the federal law, that money may only be spent on the permitting program and activities directly related to that program, such as the small business assistance program, as discussed below. Failure to establish a direct link between fees charged and benefits given is likely to result in the federal government invalidating Alaska's program. The Clean Air Act's mandate for a separate, "dedicated" fund for fee-related money is a requirement "by the federal government for state participation in a federal program," within the meaning of art. IX, sec. 7, of the Alaska Constitution. Accordingly, the bill establishes a dedicated fund, called the clean air protection fund, for financing the newly established program.

Additionally, the bill reestablishes a motor vehicle pollution control program, without significant changes. The bill simply reenacts the existing statutory provision for the control of motor vehicle emissions, with minor revisions (see proposed AS 46.14.300).

Furthermore, as required by federal law, the bill establishes a small business assistance program related to the state air quality control program. The small business assistance program would help the regulated industry comply with emission control requirements. An ombudsman is to be designated in DEC to assist businesses. Also, various educational programs are established. Additionally, a compliance advisory panel is established in DEC to act as liaison between the air quality control section in DEC and the United States Environmental Protection Agency (EPA) in matters pertaining to the impacts of the emission control program on small businesses. See proposed AS 46.14.400 - 46.14.430.

The new chapter also contains a series of general provisions. One of those pertains to public records. Like the hazardous waste program, the federal

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government imposes certain obligations on DEC and on authorized local agencies to allow public access to certain information received from permittees. Therefore, proposed AS 46.14.500 supplements Alaska's public records law to specifically allow access to these records. A counterbalancing section, proposed AS 46.14.510, makes confidential certain proprietary business information if disclosure would likely affect the business's competitive position. See proposed AS 46.14.500 - 46.14.900.

As before, municipalities and other entities may implement a local air quality control program if they desire. Provisions enabling those entities to establish local air quality control programs are found in proposed AS 46.14.520 - 46.14.550.

Another significant "general" provision is located at proposed AS 46.14.560. Throughout the bill, both owners and operators of air contaminant sources are legally responsible for performing all obligations imposed by the bill, if enacted. Proposed AS 46.14.560 clarifies that owners and operators are not required to perform redundant actions, but liability for nonperformance can be imposed on both owners and operators.

The bill amends many of the enforcement provisions in existing AS 46. Most of the amendments are minor and technical in nature, to recognize the newly created chapter so that existing legal remedies for environmental violations can apply to the air quality control program. Among these amendments is a clarification regarding use of the oil and hazardous substance release response fund for air-polluting releases (see secs. 19 and 20 of the bill).

In addition to these general provisions, the bill proposes to establish new administrative penalties for air pollution. If a person is found to have violated the air quality statutes, the department may conduct an administrative proceeding and assess administrative penalties without having to resort to judicial process. Experience has demonstrated that less serious violations often go unpunished because the costs of litigation are disproportionately large in comparison to the dollars expected to be recovered. The proposed administrative penalty provision gives the department more flexibility to resolve disputes over air pollution compliance. The bill also allows a person to challenge, through an appeal to the court, administrative penalties assessed. See proposed AS 46.14.295.

Under the bill, the criminal penalty for a class A misdemeanor offense related to the new chapter is \$10,000 per offense per day instead of the \$5,000 penalty currently established in AS 12.55.035(b)(3). The \$10,000 minimum is required by federal law.

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February 3, 1992
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A variety of terms in the air quality control provisions of the bill are defined in proposed AS 46.14.900. Most of the definitions come from existing state or federal regulations or state or federal law.

Several statutes not in AS 46 make reference to provisions of AS 46 that are being repealed by this bill (i.e., AS 44.46.025). These provisions have been amended to acknowledge changes made to AS 46 by the bill, and to coordinate with the substance of the newly created program.

The sections of the bill take effect at differing times. The staggered effective dates accomplish several things. First, several key areas of the bill concerning the permit process must meet strict federal requirements or the EPA may disapprove Alaska's program and assume federal administration in Alaska. A delayed effective date for those provisions will allow an opportunity for the state and the EPA to review enacted legislation and recommend any technical changes before its effective date, to assure compliance. Next, a delayed effective date for new requirements will allow DEC an opportunity to develop state regulations, to be adopted when certain key provisions of the bill take effect at a later date. Finally, an immediate effective date is provided for certain portions of the bill, to improve enforcement and to allow existing parts of the air permit program to continue without interruption.

I urge your prompt consideration and passage of this bill.

Sincerely,

A handwritten signature in black ink, reading "Walter J. Hickel". The signature is written in a cursive, flowing style.

*Walter J. Hickel
Governor*

FISCAL NOTE

No. 1

**STATE OF ALASKA
1992 LEGISLATIVE SESSION**

Bill Version: SB 383

(S) Publish Date: 2-3-92

Revision Date: _____ Department Affected: Environmental Conservation

Title: Alaska Air Permit Statutes BRU: Division of Environmental Quality

Component: Air Quality Management

Sponsor: Governor Walter J. Hickel

Requestor: Governor

COMPONENT SERIAL NO.

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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93*1	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	938.8	0	523.2	196.9	160.6	193.0
TRAVEL	253.2	0	106.3	48.7	39.7	47.5
CONTRACTUAL	369.2	0	142.5	65.2	53.2	63.6
SUPPLIES	85.0	0	35.7	16.1	13.3	15.9
EQUIPMENT	216.0	0	86.5	39.6	32.3	38.6
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	1862.2	0	894.3	366.5	299.1	358.6

CAPITAL						
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REVENUE (See Note #2)						
FUND SOURCE:	1320.1	0	894.3	366.5	879.5	506.5

FUNDING: (Thousands of Dollars) (Increment Increases)

GENERAL FUND	0 (Note #3)	0	0	0	(38.3)	(147.9)
FEDERAL FUNDS	542.1	0	0	0	(542.1)	0
OTHER GF Program						
FUND SOURCE:	1320.1	0	894.3	366.5	879.5	506.5
TOTAL	1862.2	0	894.3	366.5	299.1	358.6

POSITIONS:

FULL-TIME	14	0	8	4	3	2
PART-TIME	.5	0	0	0	0	0
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary.)

- Note 1. 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 needed for this program over FY92 levels.

Prepared By: Leonard D. Verrelli Phone: 465-5100

Division: Environmental Quality Date: January 6, 1992

Approved by Commissioner: Donald A. Sandor

Agency: Department of Environmental Conservation Date: 1/6/92

Fiscal Note Computations

OVERVIEW

The current statewide programs consists of 19 professionals and two clerical persons. 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.

Eight (8) new technical positions and four (4) administrative support positions would perform the program development work. The 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 ombudsman 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 ombudsperson, 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, the current ratio of technical to support personnel is used and considered representative of the distribution of new personnel hires. Therefore, the budget matrix for the "base" year of FY93 is used to project a given future year budget, based on the ratio of future full time employees to that of the base year. 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. A conservative 4% cost increase is factored for each year after the base year.

Year		FY93	FY94	FY95	FY96	FY97	FY98
Full Time positions added		14	0	8	4	3	2
Part Time positions added		.5	0	0	0	0	0
<u>Incremental costs</u>							
Line Item		FY93	FY94	FY95	FY96	FY97	FY98
71000	Personal	938.8	0	523.2	196.9	160.6	193.0
72000	Travel	253.2	0	106.3	48.7	39.7	47.5
73000	Contract	369.2	0	142.5	65.2	53.2	63.6
74000	Supplies	85.0	0	35.7	16.1	13.3	15.9
75690	Equipment	216	0	86.5	39.6	32.3	38.6
	Year	FY93	FY94	FY95	FY96	FY97	FY98
Total Cost Projection		1862.2	0	894.3	366.5	299.1	358.6

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 fee structure was chosen from a number of candidate structures. A final fee structure will only be adopted after public participation as part of the regulation adoption process. The estimate for new facilities revenues was derived from an assumption of composition of these sources; 80% to 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 Funds

Year	FY93	FY94	FY95	FY96	FY97	FY98
General Fund Match	0	0	0	0	(38.3)	(147.9)
CAA Supplemental funds	542.1	0	0	0	(542.1)	0
Interim fees, current	1320.1	0	(617.3)	(330)	(424.1)	0
Fees, current facilities	0	0	1511.6	696.5	864.4	61.9
Fees, new facilities	0	0	0	0	439.2	444.6
Year	FY93	FY94	FY95	FY96	FY97	FY98
Total Funds	1862.2	0	894.3	366.5	299.1	358.6

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 is 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	27	41.5	41.5	49.5	53.5	56.5	58.5
Total costs							
Personal	1417.0	2355.8	2355.8	2879.0	3075.9	3236.5	3429.5
Travel	102.8	356.0	356.0	462.3	511.0	550.7	598.2
Contract	538.5	907.7	907.7	1050.2	1115.4	1168.6	1232.2
Supplies	39.2	124.2	124.2	159.9	176.0	189.3	205.2
Equipment	0	216.0	216.0	302.5	342.1	374.4	413.0
Total	2097.5	3959.7	3959.7	4853.9	5220.4	5519.5	5878.1

Total Program Funding

Year	FY92	FY93	FY94	FY95	FY96	FY97	FY98
Federal	892.1	1434.2	1434.2	1434.2	1434.2	892.1	892.1
G.F. Match	1154.1	1154.1	1154.1	1154.1	1154.1	1113.8	967.9
P/R	51.3	1371.4	1371.4	754.1	424.1	0	0
C.A. Fund	0	0	0	1511.6	2208.1	3511.7	4018.2
Total	2097.5	3959.7	3959.7	4854.0	5220.5	5519.6	5878.2

Position Title ENVIRONMENTAL ENGINEER III		No. of Positions 3	Range / Step 19A	Barg. Unit GG
Time Status Full-time	Staff Months 30	Location Various		Election District Various
TYPE OF EXPENDITURE		Amount		
Salary		121.8		
Benefits		44.0		
Premium Pay				
Other				
Total Personal Services		165.8		
Travel		15		
Contractual		12		
Commodities		7		
Equipment		15		
Other				
Total Cost		214.8		
FUNDING SOURCE FOR TOTAL COST				
Federal Receipts 1002				
G.E. Match 1003				
General Fund 1004				
I-A Receipts 1007				
CIP Receipts 1061				
Other PROGRAM RECEIPTS		214.8		

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

FY 93

Page 4 of 12

Revised Date: _____

Position Title ENVIRONMENTAL ENGINEER I		No. of Positions 1	Range / Step 15A	Barg. Unit GG
Time Status Full-time	Staff Months 3	Location Juneau		Election District Juneau
TYPE OF EXPENDITURE		Amount		
Salary		6.9		
Benefits		2.6		
Premium Pay				
Other				
Total Personal Services		9.5		
Travel		3		
Contractual		2		
Commodities		1		
Equipment		5		
Other				
Total Cost		20.5		
FUNDING SOURCE FOR TOTAL COST				
Federal Receipts	1002			
G.F. Match	1003			
General Fund	1004			
I-A Receipts	1007			
CIP Receipts	1061			
Other	PROGRAM RECEIPTS	20.5		

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 Environmental Engineer I 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

FY 93

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Revised Date: _____

Position Title ENVIRONMENTAL SPECIALIST II		No. of Positions 2	Range / Step 16A	Barg. Unit GG
Time Status Full-time	Staff Months 6	Location Various		Election District Various
TYPE OF EXPENDITURE		Amount		
Salary		25.7		
Benefits		7.2		
Premium Pay				
Other				
Total Personal Services		32.9		
Travel		6		
Contractual		4		
Commodities		1		
Equipment		10		
Other				
Total Cost		54.9		
FUNDING SOURCE FOR TOTAL COST				
Federal Receipts	1002			
G.F. Match	1003			
General Fund	1004			
I-A Receipts	1007			
CIP Receipts	1061			
Other	PROGRAM RECEIPTS	54.9		

Justification

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

The Environmental Specialist IIs will assist senior staff to:

1. develop revised regulations, recognizing small business concerns
2. identify and assist new permittees
3. develop standardized permit applications
4. prepare draft permits
5. provide assistance and information to permit applicants
6. develop the small business and pollution prevention programs
7. training regional and district permit liaisons
8. conduct inspections and compliance certifications
9. develop regulations to minimize release of hazardous air pollutants, and
10. establish a quality control/quality assurance audit program.

**Request For
New Position**

AGENCY Environmental Conservation
 BRU Environmental Quality
 COMPONENT Air Quality Management

FY 93

Page 7 of 12
 Revised Date: _____

Position Title CLERK TYPIST III		No. of Positions 2.5	Range / Step 08A	Barg. Unit GG
Time Status *	Staff Months 15	Location Various		Election District Various
TYPE OF EXPENDITURE		Amount		
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		
FUNDING SOURCE FOR TOTAL COST				
Federal Receipts	1002			
C.F. Match	1003			
General Fund	1004			
I-A Receipts	1007			
CIP Receipts	1061			
Other	PROGRAM RECEIPTS	63.6		
<p>* Full-time (2) Part-time (.5)</p>				
		<p>Justification</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"> 1. develop procedures to track permit applications 2. prepare information packets for potential permittees 3. issue and receive standardized permit applications 4. prepare permit documentation and correspondence 5. provide assistance and information to permit applicants 6. operate small business and pollution prevention hotlines 7. develop correspondence tracking systems, and 8. develop and maintain permit and permit application files. 		

**Request For
New Position**

AGENCY Environmental Conservation
 BRU Environmental Quality
 COMPONENT Air Quality Management

FY 93

Page 8 of 12
 Revised Date: _____

Position Title ACCOUNTING CLERK II		No. of Positions 1	Range / Step 09A	Barg. Unit GG
Time Status Full-time	Staff Months 3	Location Juneau		Election District Juneau
TYPE OF EXPENDITURE		Amount		
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		
FUNDING SOURCE FOR TOTAL COST				
Federal Receipts	1002			
G.F. Match	1003			
General Fund	1004			
I-A Receipts	1007			
CIP Receipts	1061			
Other	PROGRAM RECEIPTS	16.7		

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 Accounting Clerk II will assist senior staff by:

1. developing procedures for permit fees and assessments
2. preparing information packets for potential permittees
3. developing uniform accounting procedures for permit fees
4. preparing permit documentation and correspondence
5. providing assistance and information to permit applicants
6. tracking small business and pollution prevention funds
7. implementing report and audit procedures, and
8. developing standardized managerial summaries of fund activity.

**Request For
New Position**

AGENCY Environmental Conservation

BRU Environmental Quality

COMPONENT Air Quality Management

FY 93

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Revised Date: _____

Position Title PARALEGAL ASSISTANT II		No. of Positions 1	Range / Step 16A	Barg. Unit GG
Time Status Full-time	Staff Months 9	Location Juneau		Election District Juneau
TYPE OF EXPENDITURE		Amount		
Salary		27.7		
Benefits		10.8		
Premium Pay				
Other				
Total Personal Services		38.5		
Travel		0		
Contractual		2		
Commodities		1		
Equipment		5		
Other				
Total Cost		46.5		
FUNDING SOURCE FOR TOTAL COST				
Federal Receipts	1002			
G.F. Match	1003			
General Fund	1004			
I.A. 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: <ol style="list-style-type: none"> 1. drafting enabling authority 2. developing comprehensive and understandable regulations 3. drafting procedures for public participation in the permit process 4. preparing draft regulations for pollution prevention 5. providing assistance to program staff on regulatory procedures 6. developing the new State Air Quality Plan 7. preparing program authority certifications to USEPA 8. developing enhanced administrative review procedures, and 9. coordinating with established judicial review procedures. 		

Request For New Position

AGENCY Environmental Conservation
BRU Environmental Quality
COMPONENT Air Quality Management

FY 93

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Revised Date: _____

Position Title ADMINISTRATIVE ASSISTANT II		No. of Positions 1	Range / Step 14A	Barg. Unit GG
Time Status Full-time	Staff Months 9	Location Juneau		Election District Juneau
TYPE OF EXPENDITURE		Amount		
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		
FUNDING SOURCE FOR TOTAL COST				
Federal Receipts	1002			
G.F. Match	1003			
General Fund	1004			
I-A Receipts	1007			
CIP Receipts	1061			
Other	PROGRAM RECEIPTS	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"> 1. supervise procedures to track permit applications and fees 2. implement reporting and auditing procedures 3. issue standardized permit applications 4. supervise and audit permit documentation procedures 5. provide assistance and information to permit applicants 6. assure uniform accounting procedures for permit fees 7. coordinate program support functions, and 8. provide standardized managerial summaries of program activity. 				

Request For New Position

AGENCY Environmental Conservation

BRU Environmental Quality

COMPONENT Air Quality Management

FY 93

Page 11 of 12
Revised Date: _____

Position Title SMALL BUSINESS OMBUDSMAN		No. of Positions 1	Range / Step 22A	Barg. Unit GG
Time Status Full-time	Staff Months 8	Location Juneau		Election District Juneau
TYPE OF EXPENDITURE		Amount		
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		
FUNDING SOURCE FOR TOTAL COST				
Federal Receipts	1002			
G.F. 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 Ombudsperson 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.

Request For New Position

AGENCY Environmental Conservation

BRU Environmental Quality

COMPONENT Air Quality Management

FY 93

Page 12 of 13

Revised Date: _____

No. 2

Bill Version: SB 383

(S) Publish Date: 2-3-92

FISCAL NOTE

STATE OF ALASKA 1992 LEGISLATIVE SESSION

BILL NO. LEGISLATIVE SESSION

Revision Date: _____
Title: Amend Air Quality Control Program

Department Affected: Community and Regional Affairs

BRU: _____

Sponsor: _____
Requestor: _____

Component: _____

COMPONENT SERIAL NO.

0	0	0	0
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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Remond Henderson
Division: Administrative Services Division

Phone: 465-4708
Date: 1/31/92

Approved by Commissioner: E. Berni
Agency: Department of Community and Regional Affairs

Date: 1-31-92

FISCAL NOTE

No. 3

Bill Version: SB 383

(S) Publish Date: 2-3-92

STATE OF ALASKA
1992 LEGISLATIVE SESSION

Revision Date: _____ Department Affected: Department of Law
 Title: "An Act relating to air quality... control of air pollution..." BRU: Legal Services
 Component: Operations
 Sponsor: Senate Rules/Req. of Governor
 Requestor: Governor's Office COMPONENT SERIAL NO.

		9	3
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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	77.8	80.0	82.4	84.9	87.4	90.0
TRAVEL	7.5	7.7	7.9	8.1	8.3	8.5
CONTRACTUAL	7.0	7.2	7.4	7.6	7.8	8.0
SUPPLIES	4.4	2.4	2.5	2.6	2.7	2.8
EQUIPMENT	6.5					
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	103.2	97.3	100.2	103.2	106.2	109.3

CAPITAL						
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REVENUE						
FUND SOURCE:						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER 1007						
FUND SOURCE: IAR	103.2	97.3	100.2	103.2	106.2	109.3
TOTAL						

POSITIONS:

FULL-TIME	1	1	1	1	1	1
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

Prepared By: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services Date: January 31, 1992
 Approved by Commissioner: Charles E. Cole, Attorney General
 Agency: Department of Law Date: January 31, 1992

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. _____

This bill amends AS 46 by creating a new chapter for air quality control. Presently, Alaska has primary jurisdiction for managing air quality. In order to maintain primary jurisdiction (and avoid a federal takeover of the program), Alaska must make its program as stringent as federal requirements contained in the Clean Air Act. The Clean Air Act was substantially amended by Congress in 1990, and the state must conform its program to those amendments.

In order to avoid a federal takeover, and in order to avoid the withholding of federal highway money and other federal money, Alaska must restructure its air permits program by November 15, 1993. Alaska's current air pollution control program consists of 11 statutory provisions, which were enacted in 1971. The bill totally rewrites these provisions and adds substantial additional provisions to conform to the 1990 Clean Air Act amendments.

This is a large undertaking that will require the drafting and public review of a considerable and comprehensive body of regulations, in order to implement the provisions of the bill. After prior consultation with the Department of Environmental Conservation, the Department of Law has determined that it will require the full-time services of an Attorney III to provide the regulations drafting needed to implement the bill and, after the regulations have been adopted, to carry out enforcement actions required by the bill.

In conformance with federal requirements, the bill requires the collection of annual fees from permittees adequate to pay for all direct and indirect aspects of the permitting program. This should include the state's legal costs necessary to implement and maintain the program. For this reason, the Department of Law's costs are shown as interagency receipts. The client or funding agency will be the Department of Environmental Conservation.

Position Title Attorney III		No. of Positions 1	Range / Step 22A	Barg. Unit PX
Time Status PFT	Staff Months 12	Location Juneau		Election District 4
TYPE OF EXPENDITURE		Amount	Justification Enactment of comprehensive legislation to update air pollution control laws, to conform to the 1990 Clean Air Act amendments, will require the drafting and adoption of a large body of regulations requiring full-time attorney services. Once adopted, implementation and enforcement of the regulations will require continued, ongoing legal services. Under supervision of more experienced attorneys, an Attorney III is the minimum level of skill required to perform these tasks.	
Salary		58,020		
Benefits		19,818		
Premium Pay				
Other				
Total Personal Services		77,838		
Travel		7,500		
Contractual		7,000		
Commodities		4,400		
Equipment		6,500		
Other				
Total Cost		103,238		
FUNDING SOURCE FOR TOTAL COST				
Federal Receipts	1002			
G.F. Match	1003			
General Fund	1004			
I-A Receipts	1007	103,238		
CIP Receipts	1061			
Other				

**Request For
New Position**

AGENCY Department of Law
BRU Legal Services
COMPONENT Operations

FY 93

Page 2 of 3
Revised Date: _____

FISCAL NOTE

No. 4

Bill Version: SB 383

(S) Publish Date: 2-3-92

STATE OF ALASKA
1992 LEGISLATIVE SESSION

Revision Date: _____ Department Affected: PUBLIC SAFETY

Title: Amend Air Quality Control BRU: Motor Vehicles

Program: _____ Component: Field Services

Sponsor: Rules

Requestor: Governor COMPONENT SERIAL NO.

5	0	2
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EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE FUND SOURCE:	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL	-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.)

No fiscal impact upon the Division of Motor Vehicles is anticipated.

Prepared By: Gayle A. Horetski Phone: 465-4322

Division: Commissioner's Office Date: 1/31/92

Approved by Commissioner: Gayle A. Horetski for Richard L. Burton

Agency: Department of Public Safety Date: 1/31/92

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NUMBER (S) Publish Date: 2-3-92

FISCAL NOTE

Revision Date: NA Department Affected: DOT&PF
 Title: An Act relating to air quality control and BRU: Statewide Engineering & Operations Standards
 and the prevention, abatement, and control of air pollution;
 relating to civil and criminal penalties, damages, ...
 Sponsor: Office of the Governor Component: Engeer. & Operations Stand.
 Requestor: Office of the Governor Component Serial Number: 547

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY92	FY93	FY94	FY95	FY96	FY97
PERSONAL SERVICES	150.0	150.0	150.0	150.0	150.0	150.0
TRAVEL	10.0	10.0	10.0	10.0	10.0	10.0
CONTRACTUAL	4.0	4.0	4.0	4.0	4.0	4.0
SUPPLIES	2.0	2.0	2.0	2.0	2.0	2.0
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
TOTAL OPERATING:	166.0	166.0	166.0	166.0	166.0	166.0
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	166.0	166.0	166.0	166.0	166.0	166.0
OTHER	0	0	0	0	0	0
TOTAL FUNDING:	166.0	166.0	166.0	166.0	166.0	166.0

POSITIONS

FULL-TIME	2	2	2	2	2	2
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)
 The CAAA of 1990 requires a significant additional workload in the preparation of plans, multi-year capital spending program documents and project engineering designs. Each such document, each amendment thereto, and each slippage in original timeframe requires a detailed air quality conformity analysis be prepared. The effort has been likened to the environmental impact process which now employes numerous people in the department. As final EPA regulations on conformity are not yet out we have proposed a minimal staffing effort, relying on federal funds to staff this new mandated requirement.

Prepared by: Roger W. Allington, Director _____ Phone: 465-2951
 Division: Engineering and Operations Standards _____ Date: January 31, 1992
 Approved by Commissioner: Frank G. Turpin _____ Phone: 465-3900
 Agency: Department of Transportation and Public Facilities _____ Date: January 31, 1992

Distribution By Preparer: Legislative Finance, Legislative Sponsor, Requester, OMB, Impacted Agency(ies).

United States
Environmental Protection
Agency

Region 10
1200 Sixth Avenue
Seattle WA 98101

Alaska
Idaho
Oregon
Washington



February 20, 1992

Reply To
Attn OF: AT-082

Leonard D. Verrelli, Chief
Air Quality Management Section
Alaska Department of Environmental
Conservation
Box O
Juneau, Alaska 99811-1800

Dear Mr. Verrelli:

We have reviewed the version of Senate Bill No. 283 which was provided to us on February 3, 1992 by Kathy Pazera of our Alaska Operations Office. In general, we find this bill to be a comprehensive and well-conceived package which adequately addresses nearly all of the new requirements of the Clean Air Act Amendments of 1990. These proposed revisions to Alaska's statutes will enable the State to adopt the air quality programs mandated by the federal Clean Air Act, and thereby, retain state primacy in the area of air quality control.

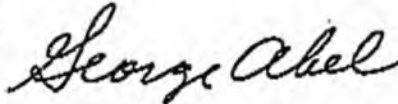
We do have a number of comments and suggestions on the bill, as well as on the companion House Bill 377 which was provided to us on February 19, 1992, which are included in the enclosure to this letter. These comments and suggestions are based, in part, on our February 11 meeting with Tom Chapple and Robert Regis of the Alaska Attorney General's Office. We recognize that the purpose of the Bills is to establish statutory authority, with many of the implementation issues and details to be worked out in the regulations.

There are, however, two serious concerns with the statutes which, if left unaddressed, would threaten EPA's approval of the state's permitting program. These are the public availability of emissions, ambient, and meteorological data used in the issuance of permits, and the \$100,000 limit on the civil penalty for the initial violation of an applicable requirement. These provisions must be revised to be consistent with the requirements of the federal Clean Air Act in order for EPA to approve the Alaska permitting program. There are also a number of other issues which will have to be addressed in either the statutes or regulations to ensure EPA approval of the permitting program. All of these issues, and our suggested corrections, are detailed in the enclosure to this letter.

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I hope that these comments and suggestions will be of use to you as you work with the Alaska Legislature on these statutory changes. If you have any questions on our comments, or wish to discuss any of the federal requirements, please contact David Bray, of my staff, at (206) 553-4253.

Sincerely,



George Abel, Chief
Air and Radiation Branch

Enclosure

cc: Al Ewing, AOO-Anchorage
Kathy Pazera, AOO-Juneau

EPA Region 10 Comments and Suggestions on Senate Bill No. 383

Sec. 46.14.200(d) - As we discussed, the Administrator may exempt source categories from the requirement to have an operating permit under the provisions of §502(a) of the Act. However, §502(a) allows the Administrator to promulgate regulations to exempt a source category, in whole or in part. EPA may allow source categories to be exempted on a state-by-state basis (i.e., in part) at the request of a state. However, this would be done through the approval of the operating permits program so it would still be an "exemption granted by the Administrator". You should make sure that this language is broad enough to allow the state to request the Administrator to exempt a source category at the time of approval of the state's operating permit program.

Section 46.14.205(a) - The Clean Air Act and EPA regulations define a major source as one which "emits or has the potential to emit 250 (100, 10, 25) tons per year or more". This section only covers sources which have the potential to emit "greater than 250 (100, 10, 25) tons per year". The language in this subsection needs to be revised to ensure that no required major facilities are inadvertently exempted from the state's permit programs.

Section 46.14.205(a) - All of the provisions which apply to "new" facilities should also cover "reconstructed" facilities. The language in this subsection should state "a new or reconstructed facility..."

Section 46.14.205(a) - As we discussed, a new item (6) needs to be added to cover modifications to existing major facilities of hazardous air pollutants. This section should be identical to subsection (6) except that it would refer to existing facilities meeting the criteria in (5) of this subsection.

Section 46.14.205(a) - Fugitive emissions must be included in determining the potential to emit for all stationary sources (see 40 CFR 51.166(b)(4)). However, some sources may be exempted from permit to construct requirements if the only reason their potential to emit exceeds applicable size thresholds is due to fugitive emissions (see 40 CFR 51.166(i)(4)(ii)). Only item (2) in this subsection explicitly requires fugitive emissions to be included. However, fugitives must also be included for other sources covered by this subsection (e.g., all major sources of hazardous air pollutants, all modifications to major sources, NSPS sources in the 250 tons per year major source category). The reference to fugitive emissions in item (2) should be deleted and appropriate exemption language added which is consistent with Clean Air Act requirements.

Section 46.14.205(a)(4) - The first "to" needs to be changed to a "by". Modifications are major if they increase the emissions of an existing major source by an amount which exceeds the "de minimis" levels.

Section 46.14.210(a)(2) - The Clean Air Act requires that all operating permit applications contain a compliance plan describing how a permitted facility will comply with applicable requirements. This plan will include a compliance schedule for sources which are currently out of compliance with an applicable requirement. However, a compliance plan is required for all permitted sources and this language should be changed accordingly.

Section 46.14.210(a)(7) - Be aware that any physical or operational limitations must be federally enforceable before they can be considered to limit a source's potential to emit and thereby reduce emissions to levels below those that would make the facility subject to AS 46.14.205. Since there are many ways to make such limitations federally enforceable, this can be covered in the state's implementing regulations.

Section 46.14.215(b) - To be consistent with AS 46.14.210(a)(6), the work "revised" needs to be added to this subsection.

Section 46.14.215(b) - The Clean Air Act requires operating permits to include all applicable requirements of the Act, including the state implementation plan. This subsection needs to ensure that applicable federal requirements (e.g., new source performance standards under §111, national emission standards for hazardous air pollutants under §112) are included in permits. The state needs to make sure that it has the legal authority to include all applicable requirements in its permits.

Section 46.14.220 - For clarity, this section should reference AS 46.14.200(b). Sources required by AS 46.14.200(a) to have permits to construct must obtain them before beginning construction.

Section 46.14.235 - As we discussed, this section (or other provisions of Alaska law) should include a severability provision to ensure that the whole operating permit is not jeopardized or opened when provisions applicable to individual sources are challenged or revised.

Section 46.14.245(a) - As we discussed, the Clean Air Act only specifies that an operating permit may not be issued by the state if EPA objects to the permit in writing during a 45-day period. There is no requirement that the state not issue a permit until EPA approves it. In practice, EPA will review all permits and submit written objections only on those permits with which it has problems. EPA will not generally submit written approvals on permits it reviews.

Section 46.14.250(a) - As we discussed, under the provisions of the Clean Air Act, EPA must approve the operating permit program for each "permitting authority". Before a public entity other than the department can issue permits and collect fees, the permit program for that entity must be submitted to, and approved by, EPA.

Section 46.14.250(b) - The list of "costs" is not all inclusive and it is unlikely that an exhaustive list could ever be developed. We recommend that this list be illustrative only and the binding provision be the requirement that the fees are sufficient to cover the costs of developing and implementing the permit program.

Section 46.14.260(b) - As we discussed, the clean air protection fund consists of permit fee program income as well as appropriations from the general fund. This co-mingling of funds may cause some confusion and accounting problems when documenting the costs of the implementing the operating permit program. For example, general fund appropriations may be used to pay for court costs and attorneys fees while permit fees cannot. Similarly, general fund appropriations can pay for activities of the small business assistance program which are not covered by permit fees. While it is acceptable for all of the permit program and small business assistance program costs to be covered by this clean air protection fund, the state will need to ensure that general funds are not used to cover costs which are required to be covered by permit fees, and visa versa.

Section 46.14.270(b) - What is meant by the phrase "changes in law"? Does this include new or revised federal and state rules and regulations? Many changes in federal and state statutes are not effective or applicable until after implementing regulations are promulgated.

Section 46.14.510 - This provision is inconsistent with the requirements of the federal Clean Air Act. All information submitted to a permitting authority for a permit to construct or operating permit, except "methods or processes entitled to protection as trade secrets" must be available to the public (see §114(c), §165(a)(2) and (d)(1), §503(e) and 40 CFR). Any provision which would prevents public availability of meteorological or ambient air quality data used in a permit application, or production data used in emissions calculations would preclude EPA approval of Alaska's permit programs.

Section 46.14.520 - As discussed, EPA must approve each local air quality control program before such program has any legal status under the federal Clean Air Act. This is especially important with respect to construction permits and operating permits, since a source would be in violation of federal law unless it has received its permit from the designated permitting authority under an EPA-approved program.

Section 46.14.550(1) - This statute must provide the state with adequate authority to deal with air contamination in the "ambient air" which is defined as the atmosphere external to buildings to which the public has access. The terms "plants" and "works" could be interpreted to include the air external to buildings but within a plant property. This air is considered to be ambient air with respect to sources outside that plant's property. That is, the air within the property of Plant A is ambient air with respect to Plant B, and visa versa.

Section 46.14.900(5) - The definition of "area source" is inconsistent with the federal Clean Air Act. Some area sources are small point sources (see §112(a)(2)). Also, some sources of fugitive emissions are considered stationary sources (or part of stationary sources). The definition of "area source" should be changed to be something more akin to "a source which is not considered a stationary source or point source" under other provisions.

Section 46.14.900(15) - The definition of "fugitive emissions" is inconsistent with EPA's definition in 40 CFR 51.166(b)(20). It should be changed to "... those emissions of an air contaminant which could not reasonably be emitted from a contaminant outlet."

Section 46.14.900(22) - The definition of "potential to emit" is inconsistent with EPA's definition in 40 CFR 51.166(b)(4). First, the effect of pollution control equipment and any limitations on the capacity of a facility to emit an air contaminant, are only creditable if they are "federally enforceable". As discussed above, there are several ways of accomplishing this in practice. Second, fugitive emissions must be included in determining the potential to emit for all stationary sources. However, some sources can be exempted from permit to construct requirements if the only reason their potential to emit exceeds applicable size thresholds is due to fugitive emissions (see 40 CFR 51.166(i)(4)(ii)). This exemption should be placed elsewhere in the statute or regulations, not in the definition of potential to emit.

Section 46.03.760(f) - The maximum civil penalty specified here for the initial violation could be less than that required by §502(b)(5)(E) of the Clean Air Act depending upon the interpretation of the term "initial violation". The Clean Air Act requires a maximum penalty of not less than \$10,000 per day for each violation. If the term "initial violation" is interpreted to mean the initial day of violation, then this provision is acceptable. However, if the "initial violation" could involve many days, or even years, of non-compliance, then the \$100,000 cap is unacceptable.

**EPA Region 10 Comments and Suggestions
on House Bill No. 377**

All of the comments on Senate Bill 383 above are applicable to House Bill 377 where similar provisions appear.

AS 46.14.900(22) - The definition of "person" should be expanded to include departments, agencies, etc. of the United States as well.

AS 46.14.205(a)(4) - If this amendment is made to include the modifications to hazardous emissions sources, then the term "annual" needs to be deleted. The de minimis levels for modifications to major sources of hazardous pollutants may be established for time periods other than annual. We recommend that a new item (6) be added rather than trying to combine all modifications in item (4).

**COMMENTS TO SENATE RESOURCES COMMITTEE
ON CLEAN AIR
February 19, 1992**

**Steven A. Torok, Chief, State Operations Section
U.S. Environmental Protection Agency
Region 10, Alaska Operations Office**

The Clean Air Act of 1970 was a legislative landmark for the United States in dealing with the environment, with the clear intent being clean air. The Act required EPA to establish national ambient air quality standards as opposed to regional air quality standards. In addition, the Act established a statutory deadline by which states had to comply with these standards. Congress also directed EPA to establish emission standards for new stationary sources. Despite the fact that the 1970 Act led to a reduction in sulfur oxides, volatile organic compounds, carbon monoxide, particulates and lead, we did not achieve the goals and intent of the Act. This is reflected in the facts: ninety-six cities have not attained the ambient ozone standard, forty-one cities exceed the carbon monoxide ambient standard, and seventy-two cities exceed the particulate matter standard. Due to controversy and legal challenges of the previous Act, EPA only established emission standards for seven hazardous air pollutants, out of a potential list of several hundred. In response to not meeting our goal of Clean Air, Congress passed the Clean Air Act Amendments on November 15, 1990.

The 1990 Clean Air Act Amendments are a significant departure from the previous Act. Over the past 20 years we have learned several things about what does and does not work and the new Act utilizes this knowledge and experience. The Act mandates cleaner fuels and cars to be built with lower emissions of pollutants. Technology based standards as opposed to risk based standards will be implemented to control air toxics which will control emissions from the entire plant and not just one chemical from the plant. Sulfur dioxide emissions from power plants are to be reduced by 10 million tons a year. Chlorofluorocarbons are to be phased out by the end of the decade. In summary, the goals of the Act when it is fully implemented by 2005 are: to remove 56 billion pounds of pollutants to the air each year, reduce emissions causing acid rain emission by 50%, reduce by 75% air toxic emissions, to have cleaner cars, fuels, factories, and power plants, and to assure that all the areas in the country meet the national ambient air quality standards.

The Act is organized into eleven Titles (next page). In order for Alaska to carry out the requirements of the Clean Air Act, specific state statutory authority will need to be provided to the Alaska Department of Environmental Conservation. Such legislation will need to address an operating permits program which incorporates enforcement authority.

CLEAN AIR ACT AMENDMENTS 1990

Title I	Provisions for Attainment and Maintenance of National Ambient Air Quality Standards
Title II	Provisions Relating to Mobile Sources
Title III	Hazardous Air Pollutants
*Title IV	Acid Deposition Control
Title V	Permits
Title VI	Stratospheric Ozone Protection
Title VII	Provisions Relating to Enforcement
Title VIII	Miscellaneous Provisions
Title IX	Clean Air Research
Title X	Disadvantaged Business Concerns
Title XI	Clean Air Employment Transition Assistance

* Not applicable to Alaska

1. How has Congress established the respective roles of the federal Environmental Protection Agency (EPA) and the state air agencies in providing healthy outside air quality?

In the Clean Air Act of 1970, Congress charged EPA with establishing national air quality standards to protect public health and welfare. These are concentrations of contaminants that cannot be exceeded and are to be applied uniformly throughout the country.

Congress recognized that sources and severity of pollution problems varied across the nation. Locally developed plans to achieve compliance with the standards were likely to be more cost-effective. Congress, therefore, delegated authority to the states to implement air quality programs.

EPA retains ultimate responsibility for clean air, though. Congress required that EPA develop and implement plans for areas that were not being controlled adequately by state plans or even to take over an entire state program.

2. What is Title V of the Clean Air Act Amendments of 1990?

Title V is an entirely new section that was added to the Clean Air Act (CAA) through the November 15, 1990 amendments. Its purpose is to ensure compliance with the diverse requirements of the CAA by compiling these complex requirements into a single, clear "operating permit" document for each of the affected stationary air pollution sources.

Alaska is fortunate to already have an operating permit program. The 1990 Amendments are quite prescriptive. Therefore, the Alaska program will need to be modified to meet all of the requirements mandated by Congress.

3. What sources are subject to Title V operating permits?

The 1990 Amendments require nearly all stationary sources of significant air emissions to apply for and obtain permits. This includes sources that:

- 1) emit or have the potential to emit more than 10 tons per year (tpy) of any hazardous air pollutant or a total of 25 tpy of any combination of hazardous air pollutant
- 2) have the potential to emit 100 tpy of any regulated air pollutant
- 3) are subject to a federal standard established by EPA under the authority of Sections 111 or 112 of the Clean Air Act
- 4) Any source requiring a permit prior to construction or modification. This would include such sources that have the potential to emit 250 tpy of any

regulated air pollutant or petroleum refineries that emit more than 100 tpy of any air pollutant

4. What fees are required by Title V?

Alaska must collect fees from the permitted sources sufficient to cover all direct and indirect costs *to develop and administer* the permit program to control affected sources. The 1990 Amendments presume that a minimum fee of \$25 per ton of emission is necessary to adequately fund the new program.

Costs include, but are not limited to, the following activities:

- reviewing the permit application
- enforcing the permit conditions
- emissions (stack) and ambient (outdoor) monitoring
- inspections
- developing necessary legislation, regulations, and guidance
- mathematical modeling analyses
- preparing emissions inventories
- development and administration of a small business assistance program
- information management such as tracking permit applications, compliance certification, and other data entry

5. How was the minimum fee of \$25 per ton of emission derived?

Through an indepth analysis of costs using data from state and local air agencies, EPA calculated that \$25 per ton of emission would be the minimum amount necessary to fund a program as extensive as that which is required by Title V.

The permit fees will need to support many new activities and a significant expansion of existing activities. New required activities include permitting of toxic air pollutant sources and a comprehensive small business assistance program to help the many smaller companies that will be regulated for the first time.

A state that submits a program that collects a smaller fee will have to demonstrate that the lesser amount will be adequate to support all the costs of the program. EPA economists would look very carefully at such a program.

EPA must collect fees if a state does not. Also, a source failing to pay its fee is penalized 50% of the fee amount, plus interest. Federally collected fees go to a special U.S. Treasury fund for permitting activities *not to the state*.

6. What are the timeframes for all these activities?

The Title V permit program is the mechanism that ties together all the diverse requirements of the 1990 Clean Air Act Amendments.

Here's the aggressive schedule for activities:

- November 1991

Within *one year*, EPA must promulgate operating permit regulations. On April 23, 1991 EPA proposed regulations for implementing this program with substantial state government assistance (appeared in Federal Register, May 10, 1991). Missed 11/15/91, but anticipate issuing final regulations by the end of January 1992.

- November 1992

Within *two years*, states must submit to EPA plans for a comprehensive small business assistance program.

- November 1993

Within *three years*, states must submit to EPA their permit program along with the attorney general's evaluation that the state has adequate legal authority to implement the program.

- November 1994

Within *one year* after receiving the program, EPA must approve or disapprove the state's program.

(The state has 180 days to revise and resubmit a program that has been disapproved.)

- November 1994

Industry must submit permit applications by this date.

- November 1997

Permits will be issued over no more than a three year period with at least 1/3 of the permits issued each year.

7. What consequences do the 1990 Amendments provide if a state fails to develop an adequate Title V permit plan?

If a state fails to submit an approvable program by November 1993, EPA *must* apply sanctions against the state within 18 months. If the state does not correct the deficiencies by November 1995, then EPA *must* administer the program including collecting permit fees.

In the past, Congress gave EPA some discretion in when to apply sanctions and when to administer a state program. The 1990 Amendments have taken away *much* of EPA's flexibility. In the case of the permit program, the 1990 Amendments clearly mandate that EPA *must* assure that an adequate program, either state-run or EPA-run, is in effect by 1995.

8. What are the sanctions?

The sanctions available to EPA are to withhold federal highway funds and/or to require new sources to provide 2 to 1 offsets (reduce pollution from existing sources at twice the amount that the new source will emit.) EPA *must* impose one or both of these sanctions within 18 months after November 1993. EPA *must* impose *both* sanctions by November 1995.

9. What would happen if EPA took over Alaska's permit program?

The permit program, including enforcement, would be run from EPA's Regional Office in Seattle. EPA would collect permit fees to pay for its program. Because the federal permittees would not be as familiar with Alaska's industries, the permits are likely to be less flexible and perhaps less responsive to the individual needs of each facility.

Alaska would not be preempted from continuing their own permit program. This could result in double permitting. EPA *and* Alaska could issue permits, collect fees, and conduct enforcement. This would lead to additional costs for industry as well as confusion and uncertainty.

Also, sanctions would have been imposed which could have a negative effect on Alaska's economic growth. EPA would continue to work with Alaska to develop an adequate state program. Eventually, Alaska could assume the permit program and the sanctions would be lifted. Alaska would then be responsible for enforcing and renewing permits that were originally written by EPA staff.

Summary of Consequences of Not Adopting an Approvable Operating Permit Program

A complete, fully-approvable operating permits program must be submitted to EPA by no later than November 15, 1993.

If an approvable program is not submitted by November 15, 1993, EPA may impose any one of the Clean Air Act's sanctions - either a prohibition on federal highway funds statewide or the imposition of a 2-for-1 offset requirement for new or modified major stationary sources in nonattainment areas.

If a permit program is not approved by May 15, 1995, EPA is required to impose the Clean Air Act's sanctions - specifically, a prohibition on federal highway funds statewide and the imposition of a 2-for-1 offset requirement for new or modified major stationary sources in nonattainment areas.

EPA is also authorized to withhold any federal air grant funds which would support permitting and enforcement activities.

If a full program is not approved by November 15, 1995, EPA is required to promulgate and run a federal permitting program. In this situation, sanctions on highway funds and offset requirements will continue and federal air grant funds will be withheld.

If EPA must run a permit program, EPA will charge fees adequate to pay for the cost of the federal program. Federal fees are likely to be much greater than state fees would be.

If EPA must run a permit program, permits will be issued in accordance to EPA regulations and standard procedures. Little consideration can be given to Alaska-specific concerns or needs.

Benefits of a State Program Instead of a Federal Program

State permitting program can be customized to best fulfill the state's needs and environmental policies (provided the minimum federal requirements are met).

State agencies are more in tune with local concerns and can respond better to both the regulated community and the public.

Good operating permits that adequately reflect a source's operating will be a benefit to the source, the state, and the public alike.

Permit revenues will greatly reduce the amount of state general funds needed to support the air program (i.e., the user fee concept).

ATTACHMENTS



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

APR 24 1991

OFFICE OF
AIR AND RADIATION

SUMMARY OF EPA PROPOSED OPERATING PERMIT RULE

UNDER THE CLEAN AIR ACT

On April 23, 1991, the Environmental Protection Agency (EPA) proposed a national air pollution control permit program, as required by the Clean Air Act Amendments of 1990. The entire text of the proposal will appear soon in the Federal Register. The public will have 60 days from the date of publication to comment on the proposal. EPA will take the public comments into consideration and issue the final rule in November 1991.

- o Signed into law by President Bush on November 15, 1990, the Clean Air Act Amendments of 1990 include a number of new programs to be implemented by the operating permit program, including an acid rain title that calls for an annual 10 million ton reduction in sulfur dioxide from 1980 levels; a performance-based standard equivalent to "maximum achievable control technology" for air toxics; and an "annual improvement" program for reducing ground-level ozone or "smog."
- o The most important procedural reform -- and arguably the most important of all the new provisions -- in the new Act is the operating permit program in Title V.
- o While the established State Implementation Plan remains the key strategic and planning document for States to use in meeting many air quality goals, the new permit program enhances air quality control by simplifying oversight and enforcement of a source's air pollution control requirements and generating income for States.
- o The new operating permits program makes the Clean Air Act more consistent with other environmental laws, like the Clean Water Act, the Resource Conservation and Recovery Act, and the Federal Insecticide, Fungicide, and Rodenticide Act, all of which require permits. The new Clean Air Act's program is modelled after a similar program under the Clean Water Act's Federal National Pollution Discharge Elimination System (NPDES).

- o Over 40 States already have their own laws requiring operating permits for sources that emit pollution into the air. The new program under the Clean Air Act Amendments of 1990 will establish some national consistency by calling on all States to establish and operate a program requiring permits from sources affected under the new Act.
- o In April 1991 EPA signed proposed regulations that specify the minimum elements of a State operating permit program. EPA will issue those regulations in final form in November 1991.

THE TIMETABLE: HOW THE NEW OPERATING PERMIT PROGRAM WILL WORK

- o EPA has one year to issue the final regulations (by November 1991). Then each state has two years to submit to EPA a permit program that meets those regulatory requirements (by November 1993).
- o EPA then has one year to approve or disapprove the program (by November 1994).
- o EPA must levy sanctions against a state that does not submit or enforce a permit program.
- o All sources subject to the permit program must submit a complete permit application within 12 months of the effective date of the EPA-approved state program.
- o The state has three years after EPA approval to issue the first round of Title V permits.
- o After the first round of permits has been completed, state permitting authorities will then have 18 months from receipt of a new permit application to issue or deny a new or renewed permit.
- o EPA has 45 days to review each permit and to object to permits that violate the Clean Air Act. If EPA fails to object to a permit that violates the Act or the state implementation plan, citizens have 60 days to petition EPA. EPA must then explicitly grant or deny the permit within 60 days.
- o Judicial review of EPA's decision on a citizen's petition is available in the Federal Courts of Appeals.

BENEFITS OF THE PERMIT PROGRAM

- o Improved Enforcement President Bush promised that his clean air legislation would contain strong enforcement provisions and the new permitting program plays a key role in fulfilling

that promise. The program is the centerpiece for compliance with the entire Act.

- o Under the old Act, pollution control requirements were often ambiguous, incomplete, and scattered throughout numerous hard-to-find provisions of state implementation plans and federal regulations. In many cases applicable state implementation plans did not require sources to submit periodic compliance reports to EPA or the States.
- o The new program will ensure that all of a source's obligations with respect to the Clean Air Act will be contained in one permit document. Sources will file periodic reports identifying the extent to which it has complied with those obligations. These requirements will greatly enhance the ability of state agencies and EPA to track compliance and evaluate its air quality situation.
- o Also, public involvement in reviewing and commenting on draft permits and being able to petition EPA will result in improved enforcement of the Act.
- o More State Resources The new program will greatly augment a state's resources to administer air pollution control programs by requiring sources of pollution to pay their fair share of the costs of a state's air pollution permitting program.
 - o In the past inadequate state resources have sometimes hampered air pollution control efforts.
 - o Under the new Act States will levy an annual permit fee sufficient to cover all reasonable direct and indirect costs to develop and administer the permit program. That amount must be equal to at least \$25 per ton of each regulated pollutant (not including carbon monoxide), adjusted for inflation. The state is not required to count emissions of any pollutant from any one source in excess of 4,000 tons per year. The program can reduce the required fee if it can demonstrate that a lesser amount will support the program.
 - o EPA expects that the permit fee program will raise some \$300 million per year on a nationwide basis. This will significantly increase the funding level of state air pollution control agencies.
 - o If EPA determines that a state's fee program is not approvable, or that a state is not adequately administering or enforcing an approved fee program, EPA may collect reasonable fees from permittees. Those fees

would be deposited in a special Treasury fund; subject to appropriation, to carry out EPA's permitting activities.

- o Streamlined Process to Revise Control Requirements. The new program lays the foundation for streamlining the process to revise control requirements for single sources of air pollution. In the past, revisions to a source's pollution control requirements would often require full rulemaking by both the States and EPA to change the state's implementation plan. This process sometimes took years, creating a great deal of uncertainty for the affected source. In the near term, States will still have to submit revised plans if they rely on more stringent permit limits to achieve improved air quality. Eventually, however, the new program proposes that the plans allow for single source revisions to be handled through the permit process that limits EPA to a 45 day review period.

A PUBLIC PROCESS: HOW EPA DEVELOPED THE PERMITS PROPOSAL

- o In order to meet the short timeframe provided in the Act for EPA to issue the final rules (12 months), EPA developed an unprecedented consultation process prior to proposal.
- o EPA conducted a series of preproposal roundtable discussions with representatives from state and local air pollution control agencies, industry, environmental groups, and other federal agencies. This has allowed EPA to address as many contentious issues as possible as early as possible in the regulatory process.
- o With insight from this process, the Agency has been able to construct creative solutions to many of the most complicated aspects of the permit regulations. Also, the process pioneered for this rulemaking illustrates an expedited method for identifying key outside group concerns and resolving internal EPA issues. A similar process is being used for the early reductions of toxic air emissions and is being planned for other rulemakings in the future.
- o This "roundtable discussion" process supplements, but in no way replaces, the formal notice and public comment process that has traditionally been used by EPA. We will, of course, take full public comment on the proposed rule.
- o The public will have 60 days to comment on the proposed rule. EPA will analyze those comments and intends to issue the final rule in November 1991.

THE OPERATING PERMITS PROPOSAL

- o The proposed package addresses concerns raised by state and local agencies, and industry and environmental groups on several key issues, including the scope of the program; flexibility of industry to make operational changes without revising its permit; the relationship between permits and the state implementation plans; the extent to which a source can rely on the permit as a complete statement of all its obligations under the Act (so-called "permit shield"); and other issues.

- o Program Scope: The program will require all major sources of air pollution to obtain an operating permit. The definition of "major" source varies within the Act's classification system for nonattainment areas. For example, while a source would have to emit 100 tons per year or more of ozone-producing volatile organic compounds to be considered a "major" source in most areas of the country, that definition tightens to 50 tons per year in urban areas designated as "serious," and 25 tons per year in those urban areas designated as "severe" under the Act. In the Los Angeles area, a 10 ton per year source of volatile organic compound emissions is considered a "major" source under the Act.

Likewise, the definition of major source under the air toxics provisions in Title III of the new Act defines major sources as those that emit 10 tons per year of any hazardous pollutant or 25 tons per year of a combination of hazardous pollutants.

EPA proposes to defer the applicability of most small (sources not defined as "major") sources for five years. This will help phase in the program in an orderly fashion, as well as reduce the administrative burden on many small businesses, as well as States that must implement the program.

EPA also proposes to define a "source" as all similar emission units under common control at the same plant site. This means that units within a contiguous area and which are in the same major group industrial classification will be considered in whether a source is defined as "major."

The Agency also proposes that a source be subject to the Title V permits requirements for emissions of all pollutants regulated under the Act, once the source is subject to the permit program for one pollutant. [Note: this is consistent with the way EPA has historically operated for construction permits issued under Title I of the Act.] The law does not allow EPA to restrict the applicability of permit requirements to the group of equipment within a plant emitting the particular pollutant for which the source is defined as "major."

- o Operational Flexibility: Title V requires the operating permit program to include provisions for allowing sources to make certain allowable operational changes without revising its operating permit. This requirement is an important factor for assuring that the program does not seriously hinder a source's ability to respond to market factors.

EPA proposes to establish a three-tiered process that tailors the amount of administrative review preceding a proposed change to the environmental effect of the change. These include:

- o Administrative permit amendments which include "typos," address and ownership changes, changes processed under the New Source Review provisions of the Act which have already had public notice and comment, certain changes to interim compliance plan milestones, and other changes having no effect on air quality. These changes can be handled by direct correspondence, copies of which would be supplied to EPA and placed in the public record.
- o Minor permit amendments which include changes to a permit that result in emission increases to the permit, but that do not trigger "modification" requirements under the Act. Sources making minor permit amendments would have to give at least seven days prior notice to the permitting authority and EPA before changing its operations. If the permitting authority does not object to the changes within 7 days, then the change would automatically be approved.
- o Permit modifications which involve significant changes to a source's operation. These changes would be subject to the complete permit review process.
- o Relationship between Permits and State Implementation Plans: Under the Act the permit will contain detailed source-specific requirements. As a result, state implementation plans will need to be less detailed in the future. EPA proposes to change its criteria for future state plans in a way that will allow more flexibility and avoid bureaucratic duplication between the plans and the permit program.
- o Permit Fees: EPA is encouraging States to consider actual, rather than allowable or potential, emissions as the basis for assessing permit fees owed by sources. The use of "actual" emissions will encourage pollution prevention to limit the size of the fee and will provide sources with more flexibility in their permits, while ensuring sufficient resources for the permit program.

- o Permit Shield: EPA is proposing to allow the "shield" (the extent to which an approved permit shields sources from other additional requirements under the Act) to apply to all applicable requirements so long as they are explicitly included in the permit or specifically found to be inapplicable in the permit. The shield does not apply to the acid rain provisions; nor does it shield a source from enforcement in conjunction with preexisting violations of the Act.
- o Federal Enforceability of State Requirements: Because the primary purpose of the Title V permit program is to assure that sources comply with all applicable federally-recognized requirements under the Act, States may not incorporate inappropriate state requirements into the Title V permits. Unless state requirements have been used to demonstrate compliance with state implementation plans, they should not be included in the permit; if they are, they will not be enforceable by EPA or by citizens under the Act's citizen suit provision.

KEY ISSUES FOR SMALL BUSINESS

- o For the first time ever, many small businesses will be required to obtain an approved operating permit for their emission requirements under the federal Clean Air Act.
- o Many small businesses will benefit from EPA's proposal to delay the permit program for 5 years for sources that are not defined as "major." Because of the time required for EPA to issue final rules and States to submit approved programs, this means that the program will not apply to "nonmajor" sources for 7 to 10 or more years. It is important to note, however, that this is not necessarily a blanket deferral for all small businesses. Some small businesses emit enough pollutants to qualify as a major source under the new, lower emissions thresholds mandated in the Act.
- o Separate and apart from this proposed regulation on operating permits, EPA is also setting up a program to help States meet their requirements under section 507 of the new Act. That section calls on States to establish a small business stationary source technical and environmental compliance assistance program. Among other things, these programs will help small businesses determine what requirements are applicable and provide information concerning compliance methods.
- o EPA also plans to encourage States to take advantage of the "general permits" provisions in section 504(d) of the Act when dealing with small business sources. This section allows the

permitting authority to issue a single permit covering numerous similar sources. This could be particularly helpful for different small businesses operating similar processes in a given area.

KEY ISSUES FOR STATES

- o Several States are already initiating efforts to review and modify their state legislative authority regarding the permit program. This is important so that the programs can be set up in a timely fashion. Over 40 States already have programs in place, and need to determine what changes must be made to make their programs (and possibly their legislative authorities) compatible with the new Clean Air Act. Those States without programs may need new legislative authority.
- o EPA's operating permits proposal contains rules that are designed to be flexible so that States can adapt their existing programs to minimum federal requirements.
- o One key benefit associated with the permit program is the fee that sources are required to pay to the permitting agency. The sooner the state program is up and running, the faster the States will be able to take advantage of the revenue-generating aspect of the permit program.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

*ABE
Kirchhoff*

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 "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 \$200-350 million in fees nationwide in its initial years. This is a conservative estimate covering

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.).
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- o Affected sources failing to pay their fee will be subject to additional fines and penalties pursuant to section 502(b)(3)(C)(ii).

- the ability of state to use surplus fee revenue for purposes other than Title V activity;
 - many existing state and local programs rely upon fee revenue from the small sources that EPA has suggested be deferred from program applicability for up to five years;
 - local agency concern about states' usurpation of their authority and sources of program support;
 - the ability to attract and retain qualified staff (EPA has suggested a reinvigoration of the state assignee program) as well as needed training; and
 - the relationship of permit fees to section 105 grants (Note: EPA has asked for comments on extending the maintenance of effort concept to fees).
- o States have requested additional Title V assistance in the form of: model legislation, additional resources, guidance on what criteria EPA will use to determine an acceptable program, training, and overall assistance from EPA regional offices.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
AIR AND RADIATION

THE CLEAN AIR ACT AMENDMENTS OF 1990

SUMMARY MATERIALS

U.S. EPA
November 15, 1990

CLEAN AIR ACT AMENDMENTS OF 1990

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The Clean Air Act Amendments of 1990

In June 1989 President Bush proposed sweeping revisions to the Clean Air Act. Building on Congressional proposals advanced during the 1980s, the President proposed legislation designed to curb three major threats to the nation's environment and to the health of millions of Americans: acid rain, urban air pollution, and toxic air emissions. The proposal also called for establishing a national permits program to make the law more workable, and an improved enforcement program to help ensure better compliance with the Act.

By large votes, both the House of Representatives (401-21) and the Senate (89-11) passed Clean Air bills that contained the major components of the President's proposals. Both bills also added provisions requiring the phaseout of ozone-depleting chemicals, roughly according to the schedule outlined in international negotiations (Revised Montreal Protocol). The Senate and House bills also added specific research and development provisions, as well as detailed programs to address accidental releases of toxic air pollutants.

A joint conference committee met from July to October 1990 to iron out differences in the bills and both Houses overwhelmingly voted out the package recommended by the Conferees. The President received the Bill from Congress on November 14, 1990 and signed it on November 15, 1990.

Several progressive and creative new themes are embodied in the Amendments; themes necessary for effectively achieving the air quality goals and regulatory reform expected from these far-reaching amendments. Specifically the new law:

- o encourages the use of market-based principles and other innovative approaches, like performance-based standards and emission banking and trading;
- o provides a framework from which alternative clean fuels will be used by setting standards in the fleet and California pilot program that can be met by the most cost-effective combination of fuels and technology;
- o promotes the use of clean low sulfur coal and natural gas, as well as innovative technologies to clean high sulfur coal through the acid rain program;
- o reduces enough energy waste and creates enough of a market for clean fuels derived from grain and natural gas to cut dependency on oil imports by one million barrels/day;
- o promotes energy conservation through an acid rain program that gives utilities flexibility to obtain needed emission reductions through programs that encourage customers to conserve energy.

With these themes providing the framework for the Clean Air Act amendments and with our commitment to implement the new law quickly, fairly and efficiently, Americans will get what they asked for: a healthy, productive environment, linked to sustainable

economic growth and sound energy policy.

**Title I: Provisions for Attainment
and Maintenance of National Ambient
Air Quality Standards**

Although the Clean Air Act Of 1977 brought about significant improvements in our Nation's air quality, the urban air pollution problems of ozone (smog), carbon monoxide (CO) and particulate matter (PM-10) persist. Currently, over 100 million Americans live in cities which are out of attainment with the with the public health standards for ozone.

The most widespread and persistent urban pollution problem is ozone. The causes of this and the lesser problem of carbon monoxide (CO) and particulate matter (PM-10) pollution in our urban areas are largely due to the diversity and number of urban air pollution sources. One component of urban smog - hydrocarbons - comes from automobile emissions, petroleum refineries, chemical plants, dry cleaners, gasoline stations, house painting and printing shops. Another key component - nitrogen oxides - comes from the combustion of fuel for transportation, utilities and industries.

While there are other reasons for continued high levels of ozone pollution, such as growth in the number of stationary sources of hydrocarbons and continued growth in automobile travel, perhaps the most telling reason is that the remaining sources of hydrocarbons are also the most difficult to control. These are the small sources - generally those that emit less than 100 tons of hydrocarbons per year. These sources, such as auto body shops and dry cleaners, may individually emit less than 10 tons per year, but collectively emit many hundreds of tons of pollution.

The Clean Air Act Amendments of 1990 create a new, balanced strategy for the Nation to attack the problem of urban smog. Overall, the new law reveals the Congress's high expectations of the states and the Federal government. While it gives states more time to meet the air quality standard - up to 20 years for ozone in Los Angeles -, it also requires states to make constant formidable progress in reducing emissions. It requires the Federal government to reduce emissions from cars, trucks, and buses; from consumer products such as hair spray and window washing compounds; and from ships and barges during loading and unloading of petroleum products. The Federal government must also develop the technical guidance that States need to control stationary sources.

The new law addresses the urban air pollution problems of ozone (smog), carbon monoxide (CO), and particulate matter (PM-10). Specifically, it clarifies how areas are designated and redesignated "attainment." It also allows EPA to define the boundaries of "nonattainment" areas: geographical areas whose air quality does not meet Federal air quality standards designed to protect public health.

The new law also establishes provisions defining when and how the federal government can impose sanctions on areas of the country that have not met certain conditions.

For the pollutant ozone, the new law establishes nonattainment area classifications ranked according to the severity of the areas's air pollution problem. These classifications are marginal, moderate, serious, severe and extreme. EPA assigns each nonattainment area one of these categories, thus triggering varying requirements the area must comply with in

order to meet the ozone standard.

As mentioned, nonattainment areas will have to implement different control measures, depending upon their classification. Marginal areas, for example, are the closest to meeting the standard. They will be required to conduct an inventory of their ozone-causing emissions and institute a permit program. Nonattainment areas with more serious air quality problems must implement various control measures. The worse the air quality, the more controls areas will have to implement.

The new law also establishes similar programs for areas that do not meet the federal health standards for the pollutants carbon monoxide and particulate matter. Areas exceeding the standards for these pollutants will be divided into "moderate" and "serious" classifications. Depending upon the degree to which they exceed the carbon monoxide standard, areas will be required to implement programs introducing oxygenated fuels and/or enhanced emission inspection programs, among other measures. Depending upon their classification, areas exceeding the particulate matter standard will have to implement either reasonably available control measures (RACM) or best available control measures (BACM), among other requirements.

Title II: Provisions Relating to Mobile Sources

While motor vehicles built today emit fewer pollutants (60% to 80% less, depending on the pollutant) than those built in the 1960s, cars and trucks still account for almost half the emissions of the ozone precursors VOCs and NO_x, and up to 90% of the CO emissions in urban areas. The principal reason for this problem is the rapid growth in the number of vehicles on the roadways and the total miles driven. This growth has offset a large portion of the emission reductions gained from motor vehicle controls.

In view of the unforeseen growth in automobile emissions in urban areas combined with the serious air pollution problems in many urban areas, the Congress has made significant changes to the motor vehicle provisions on the 1977 Clean Air Act.

The Clean Air Act of 1990 establishes tighter pollution standards for emissions from automobiles and trucks. These standards will reduce tailpipe emissions of hydrocarbons, carbon monoxide, and nitrogen oxides on a phased-in basis beginning in model year 1994. Automobile manufacturers will also be required to reduce vehicle emissions resulting from the evaporation of gasoline during refueling.

Fuel quality will also be controlled. Scheduled reductions in gasoline volatility and sulfur content of diesel fuel, for example, will be required. New programs requiring cleaner (so-called "reformulated" gasoline) will be initiated in 1995 for the nine cities with the worst ozone problems. Other cities can "opt in" to the reformulated gasoline program. Higher levels (2.7%) of alcohol-based oxygenated fuels will be produced and sold in 41 areas during the winter months that exceed the federal standard for carbon monoxide.

The new law also establishes a clean fuel car pilot program in California, requiring the phase-in of tighter emission limits for 150,000 vehicles in model year 1996 and 300,000 by the model year 1999. These standards can be met with any combination of vehicle technology and cleaner fuels. The standards become even stricter in 2001. Other states

can "opt in" to this program, though only through incentives, not sales or production mandates.

Further, twenty-six of the dirtiest areas of the country will have to adopt a program limiting emissions from centrally-fueled fleets of 10 or more vehicles beginning as early as 1998.

Title III: Air Toxics

Toxic air pollutants are those pollutants which are hazardous to human health or the environment but are not specifically covered under another portion of the Clean Air Act. These pollutants are typically carcinogens, mutagens, and reproductive toxins. The Clean Air Act Amendments of 1977 failed to result in substantial reductions of the emissions of these very threatening substances. In fact, over the history of the air toxics program only seven pollutants have been regulated.

We know that the toxic air pollution problem is widespread. Information generated from The Superfund "Right to Know" rule (SARA Section 313) indicates that more than 2.7 billion pounds of toxic air pollutants are emitted annually in the United States. EPA studies indicate that exposure to such quantities of air toxics may result in 1000 to 3000 cancer deaths each year.

The Clean Air Act of 1990 offers a comprehensive plan for achieving significant reductions in emissions of hazardous air pollutants from major sources. Industry reports in 1987 suggest that an estimated 2.7 billion pounds of toxic air pollutants were emitted into the atmosphere, contributing to approximately 300-1500 cancer fatalities annually. The new law will improve EPA's ability to address this problem effectively and it will dramatically accelerate progress in controlling major toxic air pollutants.

The new law includes a list of 189 toxic air pollutants of which emissions must be reduced. EPA must publish a list of source categories that emit certain levels of these pollutants within one year after the new law is passed. The list of source categories must include: 1) major sources emitting 10 tons/year of any one, or 25 tons/year of any combination of those pollutants; and, 2) area sources (smaller sources, such as dry cleaners).

EPA then must issue "Maximum Achievable Control Technology" (MACT) standards for each listed source category according to a prescribed schedule. These standards will be based on the best demonstrated control technology or practices within the regulated industry, and EPA must issue the standards for forty source categories within two years of passage of the new law. The remaining source categories will be controlled according to a schedule that ensures all controls will be achieved within 10 years of enactment. Companies that voluntarily reduce emissions according to certain conditions can get a six year extension from meeting the MACT requirements.

Eight years after MACT is installed on a source, EPA must examine the risk levels remaining at the regulated facilities and determine whether additional controls are necessary to reduce unacceptable residual risk.

The new law also establishes a Chemical Safety Board to investigate accidental releases

of extremely hazardous chemicals. Further, the new law requires EPA to issue regulations controlling air emissions from municipal, hospital and other commercial and industrial incinerators.

Title IV: Acid Deposition Control

As many know, acid rain occurs when sulfur dioxide and nitrogen oxide emissions are transformed in the atmosphere and return to the earth in rain, fog or snow. Approximately 20 million tons of SO₂ are emitted annually in the United States, mostly from the burning of fossil fuels by electric utilities. Acid rain damages lakes, harms forests and buildings, contributes to reduced visibility, and is suspected of damaging health.

The new Clean Air Act will result in a permanent 10 million ton reduction in sulfur dioxide (SO₂) emissions from 1980 levels. To achieve this, EPA will allocate allowances in two phases permitting utilities to emit one ton of sulfur dioxide. The first phase, effective January 1, 1995, requires 110 powerplants to reduce their emissions to a level equivalent to the product of an emissions rate of 2.5 lbs of SO₂/mmBtu x an average of their 1985-1987 fuel use. Plants that use certain control technologies to meet their Phase I reduction requirements may receive a two year extension of compliance until 1997. The new law also allows for a special allocation of 200,000 annual allowances per year each of the 5 years of phase I to powerplants in Illinois, Indiana and Ohio.

The second phase, becoming effective January 1, 2000, will require approximately 2000 utilities to reduce their emissions to a level equivalent to the product of an emissions rate of 1.2 lbs of SO₂/mm Btu x the average of their 1985-1987 fuel use. In both phases, affected sources will be required to install systems that continuously monitor emissions in order to track progress and assure compliance.

The new law allows utilities to trade allowances 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 SO₂ at a rate below 1.2 lbs/mmBtu will be able to increase emissions by 20% between a baseline year and 2000. Bonus allowances will be distributed to accommodate growth by units in states with a statewide average below 0.8 lbs/mmBtu. Plants experiencing increases in their utilization in the last five years also receive bonus allowances. 50,000 bonus allowances per year are allocated to plants in 10 midwestern states that make reductions in Phase I. Plants that repower with a qualifying clean coal technology may receive a 4 year extension of the compliance date for Phase II emission limitations.

The new law also includes specific requirements for reducing emissions of nitrogen oxides, based on EPA regulations to be issued not later than mid-1992 for certain boilers and 1997 for all remaining boilers.

Title V: Permits

The new law introduces an operating permits program modelled after a similar

program under the Federal National Pollution Elimination Discharge System (NPDES) law. The purpose of the operating permits program is to ensure compliance with all applicable requirements of the Clean Air Act and to enhance EPA's ability to enforce the Act. Air pollution sources subject to the program must obtain an operating permit, states must develop and implement the program, and EPA must issue permit program regulations, review each state's proposed program, and oversee the state's efforts to implement any approved program. EPA must also develop and implement a federal permit program when a state fails to adopt and implement its own program.

This program--in many ways the most important procedural reform contained in the new law--will greatly strengthen enforcement of the Clean Air Act. It will enhance air quality control in a variety of ways. First, adding such a program updates the Clean Air Act, making it more consistent with other environmental statutes. The Clean Water Act, the Resource Conservation and Recovery Act, and the Federal Insecticide, Fungicide, and Rodenticide Act all require permits. The 1977 Clean Air laws also requires a construction permit for certain pollution sources, and about 35 states have their own laws requiring operating permits.

The new program clarifies and makes more enforceable a source's pollution control requirements. Currently, a source's pollution control obligations may be scattered throughout numerous hard-to-find provisions of state and federal regulations, and in many cases, the source is not required under the applicable State Implementation Plan to submit periodic compliance reports to EPA or the states. The permit program will ensure that all of a source's obligations with respect to its pollutants will be contained in one permit document, and that the source will file periodic reports identifying the extent to which it has complied with those obligations. Both of these requirements will greatly enhance the ability of Federal and state agencies to evaluate its air quality situation.

In addition, the new program will provide a ready vehicle for states to assume administration, subject to federal oversight, of significant parts of the air toxics program and the acid rain program. And, through the permit fee provisions, discussed below, the program will greatly augment a state's resources to administer pollution control programs by requiring sources of pollution to pay their fair share of the costs of a state's air pollution program.

Under the new law, EPA must issue program regulations within one year of enactment. Within three years of enactment, each state must submit to EPA a permit program meeting these regulatory requirements. After receiving the state submittal, EPA has one year to accept or reject the program. EPA must levy sanctions against a state that does not submit or enforce a permit program.

Each permit issued to a facility will be for a fixed term of up to five years. The new law establishes a permit fee whereby the state collects a fee from the permitted facility to cover reasonable direct and indirect costs of the permitting program.

All sources subject to the permit program must submit a complete permit application within 12 months of the effective date of the program. The state permitting authority must determine whether or not to approve an application within 18 months of the date it receives the application.

EPA has 45 days to review each permit and to object to permits that violate the Clean

Air Act. If EPA fails to object to a permit that violates the Act or the implementation plan, any person may petition EPA to object within 60 days following EPA's 45-day review period, and EPA must grant or deny the permit within 60 days. Judicial review of EPA's decision on a citizen's petition can occur in the Federal court of appeals.

Title VI: Stratospheric Ozone and Global Climate Protection

The new law builds on the market-based structure and requirements currently contained in EPA's regulations to phase out the production of substances that deplete the ozone layer. The law requires a complete phase-out of CFCs and halons with interim reductions and some related changes to the existing Montreal Protocol, revised in June 1990.

Under these provisions, EPA must list all regulated substances along with their ozone-depletion potential, atmospheric lifetimes and global warming potentials within 60 days of enactment.

In addition, EPA must ensure that Class I chemicals be phased out on a schedule similar to that specified in the Montreal Protocol -- CFC's, halons, and carbon tetrachloride by 2000; methyl chloroform by 2002 -- but with more stringent interim reductions. Class II chemicals (HCFC's) will be phased out by 2030. Regulations for class I chemicals will be required within 10 months, and Class II chemical regulations will be required by December 31, 1999.

The law also requires EPA to publish a list of safe and unsafe substitutes for Class I and II chemicals and to ban the use of unsafe substitutes.

The law requires nonessential products releasing Class I chemicals to be banned within 2 years of enactment. In 1994 a ban will go into effect for aerosols and non-insulating foams using Class II chemicals, with exemptions for flammability and safety. Regulations for this purpose will be required within one year of enactment, to become effective two years afterwards.

Title VII: Provisions Relating to Enforcement

The Clean Air Act of 1990 contains a broad array of authorities to make the law more readily enforceable, thus bringing it up to date with the other major environmental statutes.

EPA has new authorities to issue administrative penalty orders up to \$200,000, and field citations up to \$5000 for lesser infractions. Civil judicial penalties are enhanced. Criminal penalties for knowing violations are upgraded from misdemeanors to felonies, and new criminal authorities for knowing and negligent endangerment will be established.

In addition, sources must certify their compliance, and EPA has authority to issue administrative subpoenas for compliance data. EPA will also be authorized to issue compliance orders with compliance schedules of up to one year.

The citizen suit provisions have also been revised to allow citizens to seek penalties against violators, with the penalties going to a U.S. Treasury fund for use by EPA for compliance and enforcement activities. The government's right to intervene is clarified and citizen plaintiffs will be required to provide the U.S. with copies of pleadings and draft settlements.

Other Titles

The Clean Air Act Amendments of 1990 continue the federal acid rain research program and contain several new provisions relating to research, development and air monitoring. They also contain provisions to provide additional unemployment benefits through the Job Training Partnership Act to workers laid off as a consequence of compliance with the Clean Air Act. The Act also contains provisions to improve visibility near National Parks and other parts of the country.

CLEAN AIR ACT AMENDMENTS OF 1990

SUMMARY OF KEY TITLES

U.S. EPA
November 15, 1990

Title I - Nonattainment

- o Divides cities into six categories for ozone (3 yrs. - marginal, 6 yrs. moderate, 9 yrs serious, 15 - 17 yrs severe, 20 yrs extreme) and 2 categories for Carbon monoxide.
- o % Reduction: Applies to ozone only. Moderate areas and above must achieve 15% VOC reduction within 6 years of enactment. For serious and above, average of 3% VOC per year thereafter until attainment. Annual VOC and NOx reductions as needed to attain. The 15% and 3% is from an adjusted baseline and all reductions except those from existing FMVCP, gasoline volatility, RACT and I/M fixups are creditable. Possible exemption from % reduction based on technological feasibility, if SIP adopts measures similar to those in next higher category and if all feasible measures are adopted in the first 6 years. NOx substitution possible after 6 years.
- o Prescribed Measures: Major NOx sources meet same requirements as major VOC sources unless EPA finds no benefit. All ozone nonattainment areas correct existing RACT rules and I/M programs. Moderate areas add basic I/M, Stage II and RACT on new and existing CTG and 100 ton non-CTG sources, and make an attainment demonstration. Serious areas add enhanced I/M, RACT on 50 ton non-CTG sources, a fleet vehicle program in areas of 250,000 and up, TCMs needed to offset vehicle growth, special rules for source modifications, and photochemical modeling attainment demonstration. Severe areas add RACT for 25 ton VOC non-CTG sources and provisions requiring adoption of TCMs, if necessary to meet progress requirements and employer trip reduction provisions. Extreme areas add RACT on 10 ton sources, eliminate feasibility exemption from 15% and 3%, add NOx reductions from clean fuels or advanced technology, have peak hour traffic controls; can get SIP approved based on anticipated new technology.
- o Federal Measures: EPA issues 11 new CTGs plus CTGs for aerospace coatings, shipbuilding and repair; marine vessels rule and consumer products rules. Requires an ACT for 25 ton NOx and VOC sources.
- o Sanctions: Grace period of 18 months to cure planning failure. Then must apply 1 of 2 sanctions (modified highway ban or 2:1 offset). Air grants are available. There are Existing construction bans remain, but no new ones.
- o Federal Implementation Plans (FIPs): Within 2 years of state failure to develop an adequate SIP, mandatory attainment FIPs required.
- o Transport: Sets up 11-state NE transport commission. Requires transport states to adopt RACT for existing and new CTGs, RACT on major (50-ton) non-CTG sources, enhanced I/M in MSAs above 100,000 and Stage II or equivalent. No opt-out of VOC measures. Major NOx sources meet same requirements as major VOC sources unless EPA finds no benefit.
- o CO and PM-10: Wintertime oxygenated fuels in all CO areas >9.4 ppm. Areas > 12.7 ppm add VMT forecast, enhanced I/M and demonstrate attainment. Serious CO areas add TCMs as in severe ozone areas. PM-10 areas initially designated nonattainment must attain by 12/94 (possible extension to 2001). Moderate areas adopt RACM; serious areas add BACM. Serious CO and PM-10 areas adopt measures to achieve 5% reduction per year effective upon failure to attain.

Title II - Mobile Sources

- o **Tailpipe Standards:** Cars and light trucks: Tier I is 0.25 NMHC, 3.4 CO and 0.4 NOx. Possible Tier II is 0.125 NMHC, 1.7 CO and 0.2 NOx. Tier I phased in 1994-1996. Effectiveness of Tier II in 2004 depends on EPA study of need, feasibility, and cost-effectiveness. Useful life extended to 100,000 miles for most emission standards.
- o **Cold Temperature CO:** Phase-in beginning in 1994 of 10 gpm at 20 degrees F for cars. A 3.4 gpm standard takes effect in 2002 if 6 or more cities are in CO nonattainment in mid-1997.
- o **Clean Fuels:** In 1998 all centrally-fueled fleets in 26 areas must buy 30% of the new vehicles that meet standards of 0.075 gpm VOC and 0.2 NOx; no toxic standards. If such vehicles are not being offered for sale in California the program is delayed possibly until 2001. Purchase requirements increase to 70% in 3rd year.

In 1996, 150,000 clean fuel cars are required to be sold in California; increasing to 300,000 per year by 1999. These cars must meet a standard of 0.125 gpm VOC. Phase 2 begins in 2001 with cars meeting fleet-type standards. Other cities can opt-in to program.
- o **Reformulated Gasoline:** Beginning in 1995 reformulated gasoline is required in the 9 worst ozone areas; minimum oxygen content (2.0%), benzene (1.0%), aromatics (25%), VOCs and toxics reductions (15%, up to 20-25% in 2000). Cities can opt-in.
- o **Oxyfuels:** Beginning in 1992, gas in 41 CO areas must have 2.7% oxygen level in winter months.
- o **Urban Buses:** Delays diesel particulate standard from 1991 to 1993. Beginning in 1994 all buses must meet a PM standard of 0.05 g/hphr (if not feasible EPA will set at 0.07). Based on performance EPA may implement a low polluting bus program in larger cities.
- o **Refueling:** After consultation with DOT on safety issues, EPA required to promulgate onboard controls. Stage II requirements vary by classification.
- o **Volatility:** 9 psi in most of the country beginning 1992; EPA can set lower levels in warmer areas, but cannot require any standard below 9 psi in attainment areas.
- o **Desulfurization:** Diesel fuel highway use limited to 0.05% sulfur by weight.
- o **Air Toxics:** Based on a study of mobile source-related toxics, EPA will regulate, at a minimum, emissions of benzene and formaldehyde.
- o **Non-road Engines:** Based on a study, EPA may regulate any category of non-road engines that contribute to urban air pollution. At a minimum, EPA must control locomotive emissions.
- o **Lead in Gasoline:** As of January 1, 1996, lead banned from use in motor vehicle fuel.

Title III - Air Toxics

- o **List of Pollutants and Source Categories:** Law lists 189 hazardous air pollutants. One year after enactment EPA lists source categories (industries) which emit one or more of the 189 pollutants. In 2 years, EPA must publish a schedule for regulation of the listed source categories.
- o **Maximum Achievable Control Technology (MACT):** MACT regulations are emission standards based on the best demonstrated control technology and practices in the regulated industry. MACT for existing sources must be as stringent as the average control efficiency or the best controlled 12% of similar sources excluding sources which have achieved the LAER within 18 months prior to proposal or 30 months prior to promulgation. MACT for new sources must be as stringent as the best controlled similar source. For all listed major point sources, EPA must promulgate MACT standards - 40 source categories plus coke ovens within 2 years and 25% of the remainder of the list within 4 years. An additional 25% in 7 years and the final 50% in 10 years.
- o **Residual Risk:** Eight years after MACT standards are established (except for those established 2 years after enactment), standards to protect against the residual health and environmental risks remaining must be promulgated, if necessary. The standards would be triggered if more than one source in a category exceeds a maximum individual risk of cancer of 1 in 1 million. These residual risk regulations would be based on current CAA language that specifies that standards must achieve an "ample margin of safety".
- o **Accidental Releases:** Standards to prevent against accidental release of toxic chemicals are required. EPA must establish a list of at least 100 chemicals and threshold quantities. All facilities with these chemicals on site in excess of the threshold quantities would be subject to the regulations which would include hazard assessments and risk management plans. An independent chemical safety board is established to investigate major accidents, conduct research, and promulgate regulations for accidental release reporting.
- o **Other Issues:** A study of area source emissions and a strategy to reduce the cancer incidence from these emissions by 75% is required. Regulation of source categories accounting for 90% of the emissions of the 30 most hazardous area source pollutants. Coke ovens can receive an extension of the residual risk standards until 2020 in exchange for compliance with stringent emission standards. Air toxics regulations of utilities will be based on the results of toxic emissions studies. A study of deposition to the Great Lakes, Lake Champlain, Chesapeake Bay and coastal waters will determine whether additional regulation is needed. Regulations are required for all types of municipal waste combustors and an exclusion for facilities which burn 30% or less municipal waste.

Title IV - Acid Rain

- o **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 **NO_x:** Utility NO_x 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 NO_x 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 NO_x and also requires opacity and flow monitors.

Title V - Operating Permits

- o Within 3 years of enactment, States must develop operating permit programs. EPA reviews for approval based on regulatory guidelines EPA issues within one year of enactment.**
- o Permits will apply to major sources covered under Title I, as well as sources covered by other titles of the Act.**
- o All sources subject to the program must submit permit applications to the state within 1 year of the effective date (i.e., date of EPA approval) of the state program. The state must establish a schedule for acting on initial permit applications which assures that at least a third of these submitted applications will be acted upon annually for 3 years.**
- o The state must issue permits for a term of up to five years. Permits must include all Clean Air Act requirements applicable to the source. They must also include a schedule of compliance and applicable monitoring and reporting requirements.**
- o Sources must pay permit fees to cover the costs of the permitting program.**
- o EPA must veto a permit if it does not comply with any applicable Clean Air Act requirements.**
- o The public may sue to compel EPA to perform nondiscretionary duty if EPA fails to veto a permit that does not comply with the Act. Such cases are reviewable in the Federal Court of Appeals.**
- o Once issued, the permit replaces the otherwise applicable requirements specifically identified in the permit, but EPA may require that the permit be reopened for cause. A permit with a term of 3 or more years must be reopened if new requirements applicable to the source are promulgated.**
- o EPA may impose sanctions if a state fails to resubmit an approvable permit program after EPA has determined the initial submittal is deficient.**

Title VI - Stratospheric Ozone & Global Climate Protection

- o **Listing:** EPA must list specified ozone depleting substances with their ozone-depletion potential, chlorine/bromine loadings, atmospheric lifetimes and global warming potentials within 60 days after enactment. EPA to add to list at least every 3 years substances meeting specified criteria.
- o **Phase-out:** Phase-out dates are similar to Montreal Protocol for Class I (2000 for CFC, halon and carbon tetrachloride; 2002 for methyl chloroform), but with more stringent interim reductions. Class II (HCFC) substances phased out by 2030. Regulations for Class I required within 10 months, Class II by 12/31/99.
- o **Exchange:** Requires a net environmental benefit from trades of allowances to produce controlled substances. Regulations required within 10 months after enactment.
- o **Recycling/Use Limits:** Restricts use and emissions to LAER, requires maximum recycling and safe disposal for CFC refrigerants within 2 years, all other class I and II substances within 4 years. Illegal to vent class I or II refrigerants after 7/1/92. Prohibition on venting any environmentally harmful substitute refrigerant after 5 years.
- o **Mobile Air Conditioners:** Mandatory recycling after 1/1/92. Certification of equipment and personnel. Ban on small containers (except certified personnel).
- o **Nonessential Products.** Bans nonessential products that result in releases of class I substances within 2 years. Beginning 1994, ban use of class II substances in aerosols and non-insulating foams, with exemptions for flammability and safety. Regulation 1 year after enactment, effective after 2 years.
- o **Labeling.** Mandatory warning labels on all containers of products made with and containing class I or class II substances (depending, in some cases, on availability of safe alternatives). Regulations required within 18 months after enactment, effective 30 months after. In case of labeling, requirements applicable to containers of Class I and II substances and to products containing Class I substances. All products must be labeled by 2015.
- o **Safe Alternatives.** Requires prior notice of sale of new and existing chemicals for significant new use as substitute. EPA to publish list of safe and unsafe uses of substitutes for Class I and II as identified. Gives authority to restrict the use of unsafe substitutes. Rules required within 2 years after enactment.
- o **Procurement.** Requires all Federal Agencies to amend their procurement regulations to maximize the use of safe alternatives for Class I and II substances. Regulations required within 18 months after enactment, effective 30 months after.
- o **Methane.** EPA to publish 5 reports to Congress within 2 years, and 1 follow-up report within 4 years.

Title VII - Enforcement

- o **Enhances Enforceability:** Makes the CAA more easily enforceable and consistent with recent environmental statutes, like the Clean Water Act and the Resource Conservation and Recovery Act. A broad array of new enforcement authorities, from "traffic tickets" to criminal felonies, are provided to better match the penalty to the severity of the violation. However, some changes also limit enforcement in new ways.
- o **Violations:** Criminal violations are upgraded from misdemeanors to felonies, consistent with other environmental statutes.
- o **New Criminal Sanctions:** Will be added for knowing endangerment and negligent endangerment in connection with air toxics.
- o **Penalties:** EPA may issue administrative penalty orders up to \$200,000 and field citations for minor violations up to \$5,000, rather than taking every violation to court. EPA may issue administrative subpoenas. Sources may challenge assessments in administrative hearings and District Court.
- o **Scope:** Duration and scope of emergency orders are expanded. Authority to issue administrative compliance orders to sources is expanded to authorize schedules of up to 1 year.
- o **Restrictions:** Definitions of the terms "operator" and "person", which immunize many potential violators from enforcement, are restricted.
- o **Citizen suit:** Provisions are revised to allow courts to assess penalties as well as enjoin violations. The money will go to a special U.S. Treasury fund. Money may be designated for air compliance activities, or mitigation projects. District Courts are given jurisdiction over suits against EPA for unreasonable delay.
- o **Oversight:** Effective federal oversight of citizen suits is provided through additional notification requirements.
- o **Punishment:** The ability to prove and adequately punish ongoing and recurring violations is strengthened because the burden of proof is on the defendant for the purpose of determining penalty liability once the government shows that a violation has occurred. Once a violation has been proven, any credible evidence is admissible to show that the violation continued.
- o **Contractors:** Listing authority (by which violators are barred from receiving government contracts, grants and loans) is revised so that all criminal convictions result in debarment. EPA is not explicitly allowed to use contractors for inspection purposes.

Title VIII - Miscellaneous Provisions

- o **Outer Continental Shelf (OCS):** Program to control air pollution from sources on the Outer Continental Shelf. Sources within 25 miles of shore required to meet the same standards as onshore areas. Exemptions possible if the Administrator finds that compliance is technologically infeasible or will cause an unreasonable threat to health and safety. States adjacent to OCS sources may implement and enforce requirements if approved by the Administrator. Within 3 years of enactment the Secretary of the Interior will conduct a study of areas adjacent to Texas, Louisiana, Mississippi and Alabama, examining the impacts of emissions from Outer Continental Shelf activities.
- o **Establishment of program to monitor and improve air quality in regions along the border between the United States and Mexico:** Program effective through July 1, 1995. Monitoring conducted to determine the sources of pollutants for which NAAQS have been established. The information will be used to aid in the process of attainment for sources out of compliance with the NAAQS. The Administrator can negotiate with Mexican representatives to reduce the level of airborne pollutants and achieve NAAQS in regions along the U.S./Mexico border. Each year the Administrator will give an annual report to Congress concerning the status of the program and the progress of reaching attainment in border regions.
- o **Visibility:** Each year, for 5 years, \$ 8 million will be allocated to conduct studies which will identify and evaluate sources and source regions of both visibility impairment and Class I regions. Research includes expansion of monitoring in Class I areas, assessment of sources affecting visibility, adaptation of regional air quality models and studies of atmospheric chemistry and physics pertaining to visibility. 24 months after enactment, Administrator will conduct an assessment of how the Clean Air Act Amendments are affecting Class I areas. The Administrator can establish Visibility Transport Regions if two or more affected states petition the Administrator that the interstate transport of air pollutants is negatively affecting visibility in Class I areas. In conjunction with the transport region, a commission shall be designated. The Commission will evaluate data, studies and information pertaining to adverse impacts on visibility. Based on the evaluation, action may be taken to remedy any negative impacts. The Administrator shall establish a Grand Canyon Visibility Transport Commission within 12 months of enactment.
- o **International Border Areas:** Provides that an implementation plan or revision shall be approved by the Administrator if it meets all of the Act's requirements except attainment of NAAQS because of emissions emanating from outside the United States. States that can prove that they cannot meet ozone, CO or PM-10 attainment levels by the applicable deadline because of emissions from outside of the U.S. shall not be penalized.
- o **Other Key Provisions:** - Grants For Support of Air Pollution Planning and Control Programs, Section 808 - Renewable energy and energy Conservation incentives and Section 817 - The Role of Secondary Standards.

Title IX - Clean Air Research

- o **Monitoring and modeling:** Research calls for improved methods and techniques for measuring individual air pollutants and complex mixtures, and for addressing urban and regional ozone. Maintenance of a national monitoring network to assess the status and trends of air emissions, deposition, air quality, surface water quality, forest conditions, and visibility is required.
- o **Health effects:** EPA will study the short and long-term health effects associated with exposure to air pollutants and develop methods to assess risks from these pollutants. An interagency task force, led by EPA, will coordinate the research. EPA is required to prepare environmental health assessments for all listed hazardous air pollutants.
- o **Ecosystem:** Studies for improving our understanding of ecosystem effects from individual and multiple air pollutants, including the effects of air pollution on water quality, forests, biological diversity, and other terrestrial and aquatic systems exposed to air pollutants.
- o **Accidental Releases:** Research calls for improvements in predictive models and response technology for accidental releases of dense gases. EPA will oversee the research using the Department of Energy's Liquefied Gaseous Fuels Spill Test Facility for the experimental work.
- o **Pollution Prevention and Emissions Control:** Research is required to develop technologies and strategies for air pollution prevention from stationary and area sources.
- o **Acid Precipitation Research Program:** Continuation of research by an intra-agency task force. It will review the status of research activities conducted to date and submit to Congress a revised plan that identifies key research gaps and establishes a program to address current and future research priorities. EPA is required to sponsor specialized acid deposition studies and to have the results of its research efforts included in Task Force reports.
- o **Clean alternative fuels:** Research directs EPA to identify, characterize and predict air emissions and other potential environmental effects associated with alternative fuels. EPA is required to determine the risks and benefits to human health and the environment relative to those from gasoline.
- o **Other Studies:** Coordinate research with appropriate Federal agencies. Study of control technologies used in other industrialized countries. A six million dollar research effort on the effects of acid deposition on waters in the Adirondack region.

Title XI - Clean Air Employment Transition Assistance

- o **Job Partnership Training Act (JTPA):** Amends Title III of the Job Partnership Training Act. An additional \$50 million per year for 1991-1995 allocated to JTPA Title III to assist dislocated workers, the majority of who will likely be high sulfur coal miners, dislocated because of implementation of the acid rain title.
- o **Funding:** Ninety-five percent of the funding will go to the worker assistance programs and the remaining five percent will be used to administer the title. The Department of Labor will administer the program. Regulations must be developed within 180 days of the bill's passage.
- o **Benefits:** In addition to the benefits currently available to dislocated workers through JTPA Title III, people will be able to receive job search allowances, relocation assistance, needs related payments and extended monetary assistance. Extended monetary assistance will be available to dislocated workers who have exhausted their unemployment insurance benefits as long as their are in qualified training or educational programs.
- o **Difference from Current Program:** Currently, JTPA Title III can provide the benefits mentioned above. But, because of constraints in the way the program is operated, these benefits are not provided frequently. Title XI ensures that dislocated workers, if eligible, receive benefits.
 - The intent for providing further monetary assistance, in the form of needs related payments, is so that workers, who are adjusting to a career change and are enrolled in training or educational programs that exceed the period of time for which they receive Unemployment Insurance (UI), are able to complete training or education with further monetary assistance.
- o **Eligibility:** Payments will be awarded to a dislocated worker, if he is enrolled in training or an educational program, and either he or a member of his family has an income level below the state poverty income level. Payments will be equivalent to either the amount a person was receiving from their UI, or enough so as to bring the person up to the poverty level.

CLEAN AIR ACT AMENDMENTS OF 1990

GLOSSARY OF TERMS

**U.S. EPA
November 15, 1990**

Acid Deposition ("Acid Rain"). -- A complex chemical and atmospheric phenomenon that occurs when emissions of sulfur and nitrogen compounds and other substances are transformed by chemical processes in the atmosphere, often far from the original sources, and then deposited on earth in either a wet or dry form. The wet forms, popularly called "acid rain," can fall as rain, snow, or fog. The dry forms are acidic gases or particulates.

Air Toxics. -- Any air pollutant for which a national ambient air quality standard (NAAQS) does not exist (i.e. excluding ozone, carbon monoxide, PM-10, sulfur dioxide, nitrogen dioxide) that may reasonably be anticipated to cause cancer, developmental effects, reproductive dysfunctions, neurological disorders, heritable gene mutations or other serious or irreversible chronic or acute health effects in humans.

Aromatics. -- A type of hydrocarbon, such as benzene or toluene, added to gasoline in order to increase octane. Some aromatics are toxic.

Attainment Area. -- An area considered to have air quality as good as or better than the National Ambient Air Quality Standards as defined in the Clean Air Act. An area may be an attainment area for one pollutant and a non-attainment area for others.

Best Available Control Measure (BACM). -- A term used in the House bill referring to the "best" measures (according to EPA guidance) for controlling small or dispersed sources of particulate matter, such as roadway dust, woodstoves, and open burning.

Carbon Monoxide (CO). -- A colorless, odorless gas which is toxic because of its tendency to reduce the oxygen-carrying capacity of the blood.

Clean Coal Technology. -- Any technology not in widespread use as of the date of enactment of the Clean Air Act amendments which will achieve significant reductions in pollutants associated with the burning of coal.

Clean Fuels. -- Blends and/or substitutes for gasoline fuels. These include compressed natural gas, methanol, ethanol, and others.

Coke Oven. -- An industrial process which converts coal into coke, which is one of the basic materials used in blast furnaces for the conversion of iron ore into iron.

Cold Temperature CO. -- A standard for automobile emissions of carbon monoxide (CO) to be met at a low temperature (i.e., 20 degrees F.). Conventional catalytic converters are less efficient upon start-up at low temperatures.

Control Techniques Guideline (CTG). -- Guidance documents issued by EPA which define reasonably available control technology (RACT) to be applied to existing facilities that emit certain threshold quantities of air pollutants; they contain information both on the economic and technological feasibility of available techniques.

CFCs (Chlorofluorocarbons). -- A family of inert, nontoxic, and easily-liquefied chemicals used in refrigeration, air conditioning, packaging, insulation, or as solvents or aerosol propellants. Because CFCs are not destroyed in the lower atmosphere they drift into the upper atmosphere where the chlorine is released and destroys ozone.

CFC-12. -- A chlorofluorocarbon with a trademark name of Freon, commonly used in refrigeration and automobile air conditioning.

Emission Control Diagnostics. -- Computerized devices placed on vehicles to detect malfunction of emissions controls and notify the owner of the need for repair.

Enhanced Inspection & Maintenance (Enhanced I&M). -- An improved automobile inspection and maintenance program that includes, as a minimum, increases in coverage of vehicle types and model years, tighter stringency of inspections and improved management practices to ensure more effectiveness. This may also include annual, computerized, or centralized inspections; under-the-hood inspections to detect tampering with pollution control equipment; and increased repair waiver cost. The purpose of Enhanced I&M is to reduce automobile emissions by assuring that cars are running properly.

Federal Implementation Plan (FIP). -- Under current law, a federally implemented plan to achieve attainment of an air quality standard, used when a State is unable to develop an adequate plan. Under the Senate bill, a plan containing control measures developed and promulgated by EPA in order to fill gaps in a State Implementation Plan (SIP).

Gasoline Volatility. -- The property of gasoline whereby it evaporates into a vapor. Gasoline volatility is measured in pounds per square inch (psi), with a higher number reflecting more gasoline evaporation. Gasoline vapor is a volatile organic compound (VOC).

Halons. -- A family of compounds containing bromine used in fighting fires, whose breakdown in the atmosphere depletes stratospheric ozone.

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 (SO₂). -- A heavy, pungent, colorless air pollutant formed primarily by the combustion of fossil fuels. It is a respiratory irritant, especially for asthmatics and is the major precursor to the formation of acid rain

Transportation Control Measures (TCMs). -- Steps taken by a locality to adjust traffic patterns (e.g., bus lanes, right turn on red) or reduce vehicle use (ridesharing, high-occupancy vehicle lanes) to reduce vehicular emissions of air pollutants.

Vehicle Miles Travelled (VMT). -- A measure of both the volume and extent of motor vehicle operation; the total number of vehicle miles travelled within a specified geographical area (whether the entire country or a smaller area) over a given period of time.

Volatile Organic Compounds (VOCs). -- A group of chemicals that react in the atmosphere with nitrogen oxides in the presence of heat and sunlight to form ozone; does not include methane and other compounds determined by EPA to have negligible photochemical reactivity. Examples of VOCs include gasoline fumes and oil-based paints.

CLEAN AIR ACT AMENDMENTS OF 1990
LEGISLATIVE CHRONOLOGY

U.S. EPA
November 15, 1990

LEGISLATIVE CHRONOLOGY OF EVENTS – CLEAN AIR ACT AMENDMENTS

- o **JUNE 12, 1989** – President Bush announces the Administration's clean air proposal which comprehensively addresses three areas of environmental concern: acid deposition, toxic air pollution, and urban air quality
- o **JULY 21, 1989** – the legislative language interpreting the President's proposal is submitted to Congress
- o **JULY 27, 1989** – the Administration's bill is introduced by House Energy and Commerce Committee Chairman John Dingell (D-MI) as H.R. 3030 with 146 cosponsors (eventually 166); the measure is subsequently referred to the Energy and Commerce Committee
- o **AUGUST 3, 1989** – the Administration's bill is introduced in the Senate by Senator John Chafee (R-RI) as S. 1490 with 24 cosponsors (eventually 25); the measure is subsequently referred to the Senate Environment and Public Works Committee
- o **SEPTEMBER 13, 1989** – Health and Environment Subcommittee of the House Energy and Commerce Committee holds first of 11 mark-ups on H.R. 3030 that continue through October 11, 1989
- o **OCTOBER 11, 1989** – Health and Environment Subcommittee of House Energy and Commerce held their final mark-up of the Administration's bill (H.R. 3030); the measure, as amended, is sent to full Committee by a 21 - 0 vote
- o **OCTOBER 26, 1989** – Environmental Protection Subcommittee of Senate Environment and Public Works begins process of marking-up clean air legislation
- o **NOVEMBER 14, 1989** – Environmental Protection Subcommittee of Senate Environment and Public Works votes to include an Acid Rain title which is based on the Administration's original proposal; the Subcommittee had no further action on S. 1630
- o **NOVEMBER 16, 1989** – Senate Environment and Public Works votes out a Clean Air bill (S. 1630) by a 15 - 1 margin
- o **JANUARY 23, 1990** – Floor debate begins in the U.S. Senate
- o **FEBRUARY 1, 1990** – a group of bipartisan Senators begin meeting with Administration officials in a month-long, closed door negotiation session on amendments to S. 1630; during which, Senate floor debate is put on hold
- o **MARCH 5, 1990** – Senator George Mitchell announces agreement with the Administration on several key aspects of clean air; this measure is the product of the Administration and bipartisan Senate negotiations during February and served as the vehicle for Senate floor deliberation (it would eventually become S. 1630)
- o **MARCH 14, 1990** – Energy and Power Subcommittee of House Energy and Commerce reports H.R. 3030 out to full committee; the Subcommittee had jurisdiction over the alternative fuels and acid rain provisions in the bill, but the Chairman decided not to mark-up / amend their measure

- o **MARCH 14, 1990** – House Committee on Energy and Commerce begins public mark-up of H.R. 3030
- o **APRIL 3, 1990** – the Senate votes out the Clean Air Act Amendments of 1990; the measure was passed by a vote of 89 - 11. The following Senators voted against final passage of the bill: Byrd, Rockefeller, Simon, Dixon, McClure, Symms, Garn, Glenn, Helms, Nickles, and Wallop.
- o **MAY 17, 1990** – House Committee on Energy and Commerce reports H.R. 3030 out of committee by a vote of 42 - 1; the measure then moved to the entire House of Representatives
- o **MAY 17, 1990** – House Committee on Public Works and Transportation and the House Committee on Ways and Means were given sequential referral of certain aspects of H.R. 3030; both committees report the bill out on May 21, 1990
- o **MAY 17, 1990** – House Committee on Ways and Means receives sequential referral of H.R. 3030 for a period ending no later than May 21, 1990
- o **MAY 23, 1990** – the House of Representatives votes to pass a new Clean Air Act by a vote of 401 - 21
- o **JUNE 6, 1990** – the Senate announces their conferees for the Clean Air Act Amendments of 1990, they are as follows: Senators Quentin Burdick (D-ND), Daniel Patrick Moynihan (D-NY), George Mitchell (D-ME), Max Baucus (D-MT), John Chafee (R-RI), Alan Simpson (R-WY), David Durenberger (R-MN) as well as Lloyd Bentsen (D-TX) and Bob Packwood (R-OR) of the Finance Committee for the fee-related provisions only, all other conferees are Senate Environment and Public Works Committee members
- o **JUNE 28, 1990** – the House of Representatives announces their conferees for the Clean Air Act Amendments of 1990 – the list includes 138 House Members overall with representation from seven committees, the six committees other than the Energy and Commerce will have jurisdiction over their individual areas
- o **July 13, 1990** – House and Senate Clean Air Conferees hold their first joint conference. During the first session, the conferees selected Senator Max Baucus (D-MT) as the Conference Chairman
- o **October 22, 1990** – House and Senate Clean Air Conferees reach final agreement on Clean Air reauthorization and thus conclude conference negotiations
- o **October 26, 1990** – The House of Representatives considers the conference report and passes the measure with a 401 - 25 roll call vote
- o **October 27, 1990** – The Senate considers the conference report and passes the measure with an 89 - 10 roll call vote
- o **November 13, 1990** – S. 1630, "The Clean Air Act Amendments of 1990," is submitted to the President
- o **November 15, 1990** – The President signs the Clean Air Act Amendments

CLEAN AIR ACT

Talking Points--11/15/90

What does it do?

Reauthorizes and re-energizes efforts to achieve and maintain healthy air quality in our cities.

How?

Work for all levels of government, industry and individuals.

Federal

- Strong controls on power plants, automobiles.
- Set standards, deadlines, develop guidelines.
- Provide monetary and technical assistance.
- Sanctions and Federal plans if state/locals fail.
- Won't guarantee achievement of healthy air quality (State/local role essential).

State and local government

- Tailor programs and add measures necessary to accomodate their unique situations.
- Develop and enforce plans to achieve the air quality goals.

Individuals

- In spite of improvements in pollution control technology, growth is outstripping our ability to make 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% O2) by 1992 in all CO areas
- 100,000 mile emission warranties
- On board diagnostics
- On board vapor recovery by 1995 if safe per DOT
- Clean fuel busses by 1994
- Sanctions and incentives

State and local programs

- Continue and improve I/M
- Add stage II vapor recovery programs at large service stations
- Clean fueled fleet vehicles in serious ozone areas
- 4% per year emission reductions
- Adopt controls on point sources per national guidelines
- Adopt additional control measures needed to attain standards

(There is also a clean fuel vehicle pilot program for California.)

Air Toxics

- Addresses 189 toxic chemicals
- 250 source categories subject to regulation
- Standards promulgated in 10 years (41 categories in 2 years)
- Standards require Maximum Achievable Control Technology
- Tighter standards required 8 years after initial promulgation if residual risk greater than 1-in 1 million
- Controls on area sources such as dry cleaners
- Provisions for preventing accidental releases

Chemical Safety Board investigates accidents
Facilities assess hazards and prevention steps

- New controls on municipal, commercial, hospital incinerators

Acid Rain

- Requires 10 million ton/year reduction in SO₂, 2 million ton/year reduction in NO_x
- Federally operated allowance marketing system in Phase I, State operated in Phase II

Permits

- Requires state operating permit programs and fees
- Fee minimum of \$25 per ton of pollutant (except CO). Will raise substantial revenues for state and local agencies to carry out their air pollution control programs
- Compliance with permit is equivalent to compliance with applicable provisions of the Clean Air Act.

Federal Enforcement

- Allows use of administrative penalties
- Upgrades criminal penalties from misdemeanors to felonies for knowing violations
- Allows field citations for minor violations
- Allows collection of penalties in citizen suits
- Improves ability to use emergency orders for substantial endangerment

Chronology

President Bush proposes administration bill	June 12, 1989
Senate passes bill (89 - 11)	April 3, 1990
House passes bill (401 - 21)	May 23, 1990
Conference committee agreement	July 13, 1990
Senate passes conference bill	October 27, 1990
House passes conference bill	

Post-It™ brand fax transmittal memo 7671		# of pages	3
To	Terry	From	Russell
Co.	Senate Resources	Co.	NFIB
Dept.	SB 383	Phone #	789-4278
Fax #	465-3922	Fax #	289-3433

NFIB Alaska

National Federation of
Independent Business

POSITION PAPER

OF

NATIONAL FEDERATION OF INDEPENDENT BUSINESS
(NFIB/ALASKA)

TO THE

SENATE RESOURCES COMMITTEE

MARCH 27, 1992

ON

SB 383

AN ACT RELATING TO AIR QUALITY CONTROL AND THE PREVENTION, ABATEMENT, AND CONTROL OF AIR POLLUTION; RELATING TO CIVIL AND CRIMINAL PENALTIES, DAMAGES, AND OTHER REMEDIES FOR AIR QUALITY CONTROL VIOLATIONS; RELATING TO USE OF THE OIL AND HAZARDOUS SUBSTANCE RELEASE RESPONSE FUND; AND PROVIDING FOR AN EFFECTIVE DATE.

9159 Skywood Lane
Juneau, AK 99801



The Guardian of
Small Business

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, MY NAME IS REBA JERREL, AND I REPRESENT THE NATIONAL FEDERATION OF INDEPENDENT BUSINESS - NFIB/ALASKA. I WOULD LIKE TO THANK YOU FOR THE OPPORTUNITY TO COMMENT ON SB 383.

THERE ARE SEVERAL AREAS OF THE BILL WE ARE CONCERNED ABOUT AND NEED TO BE AMENDED:

- SECTIONS THAT GO BEYOND THE REQUIREMENTS OF THE CLEAN AIR ACT AMENDMENTS OF 1990. THE SECTIONS THAT GIVE THEM ADDITIONAL AUTHORITY TO: REGULATE MORE TYPES OF SOURCES; SET MORE STRINGENT EMISSION STANDARDS; REGULATE MORE KINDS OF AIR POLLUTANTS; AND, TO IMPOSE ADMINISTRATIVE PENALTIES.
- THE LANGUAGE THAT SAYS THEY "MAY" EXEMPT A SOURCE WHEN THE FEDERAL ADMINISTRATOR HAS EXEMPTED A SOURCE (PAGE 3, LINE 2); AND,
- THE SECTION THAT GIVES THEM AUTHORITY TO SET A SHORTER TIME LIMIT THAN 12 MONTHS FOR APPLICATION DEADLINES (PAGE 5, LINE 6); AND,

FINALLY, THE LANGUAGE FOR THE FEE STRUCTURE NEEDS TO BE CLEARLY SPELLED OUT. HISTORICALLY, THE DEPARTMENT HAS BEEN REGULATING MOSTLY LARGE CORPORATIONS. BY THEIR OWN ESTIMATION, 600 SMALL BUSINESSES THAT HAVE NOT BEEN PREVIOUSLY REGULATED, SOON WILL BE REGULATED. WHAT MAY SEEM LIKE A SMALL OR REASONABLE FEE TO THE PERSONNEL AT THE DEPARTMENT, OR A LARGE CORPORATION COULD BE VERY ONEROUS TO A SMALL BUSINESS OWNER. LANGUAGE NEEDS TO BE INCLUDED IN THE BILL THAT STATES:

THE FEES ARE TO BE NO MORE THAN NECESSARY TO MEET THE FEDERAL REQUIREMENTS FOR FUNDING OF THE PROGRAM.

ALSO, ON PAGE 29, LINE 15, LANGUAGE NEEDS TO BE ADDED THAT STATES:

ANY REGULATIONS ADOPTED UNDER THIS CHAPTER SHALL NOT BE MORE STRINGENT THAN FEDERAL LAW OR REGULATIONS.

THE STATES OF IDAHO HAS ADOPTED THIS LANGUAGE FOR FOR SHALLOW INJECTION WELLS. THE STATE OF UTAH IN A 15 PAGE LAW HAS ADOPTED THE

SAME PRINCIPLE FOR RADIATION CONTROL, WATER POLLUTION CONTROL, SAFE DRINKING WATER, AIR CONSERVATION, AND SOLID AND HAZARDOUS WASTE. THIS LANGUAGE IS INCLUDED IN AN OKLAHOMA CLEAN AIR ACT NOW UNDER CONSIDERATION. TWO BILLS ARE UNDER CONSIDERATION IN KENTUCKY THAT CONTAIN THIS LANGUAGE.

FOR SOME BACKGROUND INFORMATION: NFIB/ALASKA IS COMPRISED OF 3,292 SMALL AND INDEPENDENT BUSINESS OWNERS. THE LEGISLATIVE ABENDA OF NFIB/ALASKA IS DETERMINED BY OUR BALLOT. THE BALLOT IS OUR ANNUAL POLL OF OUR MEMBERSHIP ON A SERIES OF ISSUES DEEMED CRITICAL TO SMALL BUSINESS. A MAJORITY VOTE, OF THE MEMBERS IN RESPONSE TO THE POLL, SETS OUR POLICY AND POSITION ON LEGISLATIVE ISSUES.

THE FOLLOWING IS THE RESULT OF ONE OF THE QUESTIONS ON OUR 1991 POLL:

SHOULD LEGISLATION BE PASSED TO PROHIBIT THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION FROM IMPOSING ENVIRONMENTAL STANDARDS AND LIMITATIONS THAT ARE STRICTER THAN FEDERAL STANDARDS?

61.1% YES 33% NO 5.9% UNDECIDED

THANK YOU FOR THE OPPORTUNITY TO TESTIFY ON THIS VERY IMPORTANT BILL.

ARCO COMMENTS ON
CS HB 377 (RESOURCES)

ARCO Alaska, Inc. (ARCO) appreciates the opportunity to comment on CS HB No. 377 - legislation principally designed to bring the state air permitting laws into conformity with the requirements of the Clean Air Act amendments of 1990.

We first acknowledge the substantial work which has gone into constructing the conformity bill (and its companion measure prepared by the administration - SB 383). However, we believe these efforts are premature and should be postponed until EPA issues its implementing regulations.

It is unfortunate that the federal EPA has failed to adopt regulations in a timely fashion implementing the 1990 Air Act changes. These federal regulations are an essential missing link in defining what states are going to be required to do to comply with the federal law. Many of the federal requirements can be parsed out from the statutory language itself, but many cannot. The new act is exceedingly complex, and EPA's regulations are needed to flesh out many of the statutory requirements.

The initial deadline for submitting the new state permit program changes, now November 1993, would seem to allow for waiting until the federal regulations are promulgated before undertaking passage

ARCO Comments on House Bill No. 377
(CS - Resources 2/24/92)
March 4, 1992
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of new state law. This is particularly true where the existing state permit program law is quite comprehensive and already meets most of the requirements of the new federal law for major sources.

ARCO is not opposed to enactment of conforming legislation this year if several important modifications are made. However, it would seem more prudent to have in hand a comprehensive list of EPA requirements before final enactment to avoid duplication of efforts by the legislature, ADEC, and the regulated community.

If the legislation is not postponed, the following are several changes we view as essential to CS HB 377:

1. AS 46.14.245 OBJECTION BY FEDERAL ADMINISTRATOR. (page 7). Subsection (a) would prohibit the issuance of a state air operating permit until after federal objections are resolved. This would delay the effective date of state permits (permits are now effective upon issuance by ADEC) and could greatly prolong the process for starting up new facilities.

The Clean Air Act expressly allows permits to become effective during federal review. [(Section 505(b)(3)]. In the usual course of events, permits issued by ADEC will be routinely approved by

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EPA. However, because of the complexity and novelty of the air rules, it is indeed possible that challenges to major source permits will develop, including dilatory challenges instigated by third parties.

When a competent regulatory agency (ADEC) has fully reviewed the permit application and issued a permit after opportunity for public review and participation, it is reasonable to allow a source to go ahead with a project, taking the risk that a successful challenge may result in additional or different requirements.

Subsection (b) cannot be governed by the State laws; petitions to EPA to object to the permit are a matter solely of federal law. Accordingly, subsection (b) should be removed.

2. AS 46.14.210 - EMISSION CONTROL PERMIT PROGRAM REGULATIONS (page 5). These regulations are the heart of the new state permit program. Unless they are issued promptly, emission sources (and ADEC) will have an impossible chore attempting to comply with federal law and in piecing together practicable air permits. ADEC should have a specified period of time to write these regulations (we suggest 180 days). Further, the bill should specify time limits for the application review and issuance

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processes defined in subsection (a)(3).

Section 46.14.225 would provide an 18-month deadline for issuance of an operating permit after receipt of a complete application. This is too long, especially given the increased resources that should become available to the department from the new permit fees. Furthermore, no limit is placed on the often protracted process of determining when an application is "complete." The deadline should be no longer than 60 days for the determination of whether an application is complete and no longer than 180 days for issuance after receipt of a complete application.

3. AS 46.14.260 DURATION OF OPERATING PERMITS. (page 9)
Subsection (b) provides that an existing permit is effective pending issuance of a new permit if a timely and complete application for renewal is filed. This section should be amended to provide for the protection if a timely and substantially complete application is filed, and to allow ADEC, in its discretion, to waive the time limit requirement on a case-by-case basis. Without flexibility, this requirement could have draconian effects on an ongoing facility or business. Similar changes should be made to Section 46.14.290, TIMELY AND COMPLETE APPLICATION AS A SHIELD, to protect against the drastic effects of failing to comply

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with even minor and ministerial requirements or information demands.

4. AS 46.14.830 ADMINISTRATIVE PENALTIES FOR AIR POLLUTION.
(pages 18-19) Federal law does not require the enactment of state administrative penalties. Further, there is no compelling need to set up an extra-judicial penalty requirement in which severe penalties may be imposed without clear standards and without an adequate judicial review of the penalty. The penalties would be steep (\$10,000 per day per offense matches those penalties which may be judicially imposed). Moreover, judicial review would be under the "any reasonable basis" standard which essentially disables the court from a thorough discretionary review of the penalty. Lastly, judicial review is available only after an administrative hearing. If ADEC is to be given any "traffic ticket" authority, it should be limited to much lower "per day" and "total" amounts.

5. UPSET/MALFUNCTION REGULATION (for insertion into Section (a) of AS 46.14.210) - Federal regulations contain express recognition that unavoidable (i.e., not due to inadequate equipment or operator error) upsets or malfunctions in process or control equipment are not enforceable violations of law. See, for example,

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40 CFR 60.8(c). State law and regulations do not contain a similar recognition. A provision should be added as 46.14.210(a)(8) as follows:

(8.) an upset/malfunction regulation that excuses violations of permits or other regulatory provisions in the event such violations are caused by an unavoidable upset or malfunction in process or control equipment or during a start up or shut down interval.

Again, ARCO appreciates this opportunity to comment on this broad ranging legislation. The legislature must of course be responsive to requirements that it modify law to meet new federal standards. However, the regulated community needs adequate time to fully review the effect of the proposed legislation on all of its operations. The legislature should then fully consider the impacts of this legislation, particularly on those businesses not previously subject to regulation under the Clean Air Act. ARCO believes that the above changes, at a minimum, are essential if the bill is to go forward.

Frank

SB-383/HB-377

SUMMARY OF SIGNIFICANT DIFFERENCES

Prepared by ADEC March 26, 1992

The identified changes enumerated below reflect the major differences between SB 383 and HB 377. These changes are accomplished by the House Resources Committee and also include changes embodied in a House Judiciary Committee work draft discussed in a March 18, 1992, meeting. Many additional minor changes were made that are shown as underlined in the March 18 House Judiciary Committee work draft.

TITLE: Changes are to: 1) more succinctly describe the definition change for hazardous substances, and 2) indicate that the bill will alter the inspection and enforcement powers of the Department of Environmental Conservation.

Section 2: A new Section 2 is created that will add a new section, AS 14.09.030, which encourages contractors that provide school bus transportation to procure vehicles that use alternative fuels.

Section 3: A new Section 3 is created that will add a new section, AS 37.30.097, which requires the Department of Transportation and Public Facilities in some locations of the state to procure new vehicles that are designed to use alternative fuels.

Section 4:

AS 46.14.205 PERMIT APPLICABILITY

Several changes were made, including the title of the section. Most notable changes were:

- 1) to require a construction permit for some existing facilities that emit hazardous air pollutants when a facility undergoes a modification that causes a net increase of those pollutants above a certain level;
- 2) require a construction permit for a facility that "reconstructs" an air pollution source within the facility;

- 3) requires that if any facility must obtain a construction permit, that facility must also obtain an operating permit under subsection (b); and
- 4) the definition of the term "potential to emit" was changed, as required by federal law, to include "fugitive emissions" (those emissions that generally are not released from an exhaust stack or vent) in the calculation of potential to emit except where specifically exempted.

AS 46.14.215 STATE PLAN

The title was changed to add state policy with associated language changes to indicate the state policy.

AS 46.14.222 COMPLETENESS DETERMINATION

This new section was introduced to the House Judiciary Committee on March 18, 1992. The purpose would be to define the time period in which the department would evaluate a permit application. Such a provision would assist permit applicants in knowing when, as well as how, to effect the "Application as a Shield" provision of AS 46.14.292

AS 46.14.225 ADMINISTRATIVE ACTIONS REGARDING PERMITS

Subsection (a)(2) was changed to reflect that operating permits are to be issued within 12 months rather than 18 months after a complete application is received.

AS 46.14.250 PAYMENT OF FEES AND FEE STRUCTURE

Some language additions were made to subsection (b) to restrict the collection of excess monies, and a major addition was made to subsection (c) to require DEC to conduct a periodic evaluation of the fee structure.

AS 46.14.255 PENALTY AND INTEREST FOR NONPAYMENT

Language has been changed to reflect a maximum penalty of 5 percent per month, not to exceed 25 percent total, rather than a 50 percent penalty.

AS 46.14.270 REOPENING OF PERMITS

A language change was made in subsection (b) that would require, rather than enable, the department to treat a permit reopening as a renewal if the procedural requirements are met.

AS 46.14.275 TERMINATION, MODIFICATION, AMENDMENT, OR REVOCATION AND REISSUANCE OF PERMITS

Several changes were accomplished here; however, due to some drafting errors, they have not all been adopted by the House Judiciary Committee. Basically, the section was broken into two subsections. Subsection (a) would now address criteria upon which a permit could be terminated, modified, amended, or revoked and reissued. A new subsection (b) would set criteria for only modifying, amending, or revoking and reissuing permits. Also, the failure of an owner or operator to pay a fee or penalty would no longer be a basis for any action under this section, but would be a basis for the department to deny renewal of a permit.

AS 46.14.410 SCOPE OF PROGRAM (SMALL BUSINESS ASSISTANCE PROGRAM)

By adding a definition of "person" in section 900 and including local governments and other state entities in that definition, the small business assistance program can be extended to those entities, thereby expanding the assistance to a greater number of affected parties. However, federal law prohibits the use of permit fee monies to accomplish that additional assistance to those entities included in the larger meaning of person. If the assistance were to be provided to entities now included, general fund monies would be required.

AS 46.14.430 COMPLIANCE ADVISORY PANEL

This section was rewritten to change the focus from a panel that is appointed by the Governor based upon submission of candidate names from the Legislature to a panel that is composed of individual appointments, some of which are made by the Governor and some by the Legislature, as enumerated in the Clean Air Act.

AS 46.14.510 CONFIDENTIALITY OF RECORDS

Subsection (2)(B) has been deleted because it is in conflict with the public disclosure requirements of the Clean Air Act. Alternatively, the same objective can be achieved if a company secures copyright protection for ambient air quality and meteorological data, or qualifies the data as trade secret.

7-LS1624P
Lauterbach
3/17/92

RECEIVED
MAR 17 1992

Dept. of Environmental Conservation
Air Quality Section

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; clarifying the definition of 'hazardous substance' to include
4 releases and threatened releases to the atmosphere; amending the lien provisions relating
5 to the oil and hazardous substance release response fund; relating to inspection and
6 enforcement powers of the Department of Environmental Conservation; and providing for
7 an effective date."

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

9 * Section 1. PURPOSES. (a) The primary purpose of this Act is to bring the state into compliance
10 with the 1990 amendments to the federal Clean Air Act codified at 42 U.S.C. 7401 - 7671q. Changes
11 in state law are necessary to allow the state to continue to have primary management of air quality in
12 the state and to retain federal approval of the state's air quality control program in order to ensure the
13 continued receipt of federal highway and air pollution control money. The federal Environmental

1 Protection Agency must prohibit the approval of highway projects and highway grants, and may withhold
2 air pollution control grants, if the state does not comply with 42 U.S.C. 7401 - 7671q (Clean Air Act).

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

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

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

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

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

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

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

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

29 CHAPTER 14. AIR QUALITY CONTROL.

30 ARTICLE 1. CLASSIFICATIONS AND STANDARDS.

31 Sec. 46.14.010. EMISSION CONTROL REGULATIONS. (a) After public hearing, the

1 department may adopt regulations under this chapter as necessary to prevent, abate, control, or
2 identify air pollution due to emissions, including regulations setting emission standards,
3 performance standards, and limitations. The standards and limitations may be based on human
4 health and welfare or on available technology and may be for the state as a whole or may vary
5 from area to area in recognition of local conditions. The department may provide exemptions
6 for fugitive emissions to the extent allowed under federal laws and regulations.

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

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

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

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

24 ARTICLE 2. EMISSION CONTROL PERMIT PROGRAM.

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

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

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

3 (d) The department shall ensure that permits issued, modified, amended, or renewed
4 under this chapter comply with the emission limitations and other requirements of 42 U.S.C.
5 7401 - 7671q (Clean Air Act), applicable federal regulations, and the state air quality control
6 plan.

7 (e) 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 REQUIRING PERMITS. (a) Before constructing,
11 installing, modifying, reconstructing, or establishing a facility, the owner and operator shall obtain
12 a construction permit from the department if the facility is any one of the following:

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

15 (2) a new facility of a type classified under AS 46.14.020 that emits or has the
16 potential to emit greater than 100 TPY of a regulated air contaminant;

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

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

22 (5) an existing facility, otherwise described in (1), (2), (3), or (4) of this
23 subsection, for which

24 (A) a modification is proposed that would increase actual emissions of an
25 air contaminant by an amount equal to or greater than the emission quantity set out in
26 regulations adopted under AS 46.14.010; or

27 (B) reconstruction is proposed that makes it technologically and
28 economically feasible to meet the applicable standards of this chapter.

29 (b) The owner and operator of a facility shall obtain an operating permit from the
30 department if the facility is a major facility, a facility subject to (a) of this section, or a facility
31 that contains one or more of the following sources:

1 (1) a source subject to federal new source performance standards under 42 U.S.C.
2 7411 (Clean Air Act, sec. 111) or national emission standards for hazardous air pollutants issued
3 under 42 U.S.C. 7412 (Clean Air Act, sec. 112); or

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

6 Sec. 46.14.210. EMISSION CONTROL PERMIT PROGRAM REGULATIONS. (a)
7 The department shall adopt regulations to address the following elements of the emission control
8 permit program:

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

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

14 (3) procedures for

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

16 (B) processing and reviewing an application;

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

18 hearing; and

19 (D) issuing permits;

20 (4) standard permit conditions, including conditions for

21 (A) emission standards and limitations;

22 (B) monitoring, recordkeeping, and reporting;

23 (C) inspection and entry;

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

25 (E) annual certification of compliance; and

26 (F) excess emission or process deviation reporting;

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

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

31 (7) procedures for approving physical or operational limitations that will reduce

1 a facility's emissions to levels below those that would make the facility subject to AS 46.14.200
2 and 46.14.205.

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

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

10 (b) The department shall act for the state in any negotiations relative to the state air
11 quality control plan developed under 42 U.S.C. 7401 - 7671q (Clean Air Act). The department
12 may adopt regulations necessary to implement the state plan. [~~previous (b) moved to AS 46.14.200(d)~~]

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(b), or at an earlier
17 time if required by the department. New section AS 46.14.222 is proposed

18 Sec. 46.14.225. ADMINISTRATIVE ACTIONS REGARDING PERMITS. (a) Except
19 as provided in AS 46.14.245 and 46.14.255(b), after receipt of a complete application, and after
20 notice and 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 12 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, the department may, unless the permit is disapproved by the federal
14 administrator, establish a general operating permit that would be applicable to more than one
15 facility determined by the department to be similar in source structure. A general operating
16 permit must contain provisions that meet the requirements of this chapter applicable to operating
17 permits. A general operating permit is not effective for a specific facility until the owner and
18 operator of the facility has submitted an application under AS 46.14.220 and the department has
19 issued the general operating permit. The department shall issue or deny a general operating
20 permit within 30 days 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 exceed, the reasonable
10 direct and indirect costs required to develop and implement the permit program and the federally
11 mandated aspects of the small business assistance program established in this chapter. For
12 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 or other costs associated with an enforcement action;
- 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 **Sec. 46.14.255. PENALTY AND INTEREST FOR NONPAYMENT.** (a) The
3 department shall adopt regulations that provide for the assessment of a penalty of five percent
4 per month of delinquency up to a maximum of 25 percent of the fee established under
5 AS 46.14.250(b) against the owner and operator of a facility if the owner and operator fail to
6 timely pay a fee lawfully imposed under this chapter. The department may also assess interest
7 against the owner and operator, computed under AS 45.45.010(a), after a fee is due under this
8 chapter and is unpaid.

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

12 **Sec. 46.14.260. DURATION OF OPERATING PERMITS.** (a) An operating permit
13 under this chapter shall be issued for a fixed term established by the department that is no longer
14 than five years and no shorter than three years after the date of issue, except as provided for
15 temporary permits under AS 46.14.280.

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

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

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

1 renewal have been met.

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

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

8 (1) terminate, modify, amend, or revoke and reissue a construction or operating
9 permit if the department finds that the permit was obtained by misrepresentation of material fact
10 or by failure of the owner and operator to disclose fully the facts relating to issuance of the
11 permit;

12 (2) modify, amend, or revoke and reissue a construction or operating permit if the
13 department finds that

14 (A) the permit contains a material mistake;

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

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

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

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

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1 require the owner and operator to notify the department at least 30 days before a change in
2 location of a facility permitted under this section.

3 Sec. 46.14.285. PERMIT AS SHIELD. (a) Compliance with an operating permit issued
4 under this chapter is considered to be compliance with the operating permit program established
5 under this chapter.

6 (b) Nothing in this section alters or affects

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

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

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

20 ARTICLE 3. MOTOR VEHICLE POLLUTION CONTROL PROGRAM.

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

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

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

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

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

16 ARTICLE 4. SMALL BUSINESS ASSISTANCE PROGRAM.

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

20 Sec. 46.14.410. SCOPE OF PROGRAM. (a) The small business assistance program
21 shall

22 (1) collect, coordinate, and disseminate information on methods and technologies
23 that will assist small business facilities to comply with this chapter and regulations adopted under
24 this chapter,

25 (2) encourage lawful cooperation among small business facilities and other
26 persons to facilitate compliance with this chapter and regulations adopted under this chapter,

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

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

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

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

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

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

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

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

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

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

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

29 Sec. 46.14.420. POWER TO LIMIT PROGRAM. After consultation with the federal
30 administrator and the administrator of the United States Small Business Administration, and after
31 providing notice and opportunity for public hearing, the department may exclude from the scope

1 of the small business assistance program established in AS 46.14.410 a category or subcategory
2 of small business facilities that the department finds to have sufficient technical and financial
3 capabilities to meet the requirements of this chapter and federal law without the assistance
4 provided under AS 46.14.400 - 46.14.430.

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

8 (b) The panel consists of

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

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

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

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

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

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

26 (c) The compliance advisory panel shall

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

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

30 (3) prepare advisory opinions concerning the effectiveness of the small business
31 assistance program, difficulties encountered in making the program efficient and effective, and

1 degree of enforcement and severity of air pollution offenses;

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

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

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

9 ARTICLE 5. LOCAL PROGRAMS.

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

21 Sec. 46.14.510. INADEQUACY OF LOCAL PROGRAM. (a) If a municipality or a
22 local air quality district has an approved air quality control program under AS 46.14.500 and the
23 department determines that the program is being implemented in a manner that fails to prevent
24 or control air pollution in the jurisdiction to which the program applies, the department shall give
25 written notice, setting out its determination, to the municipality or local air quality district.
26 Within 45 days after giving written notice, the department shall conduct a public hearing on the
27 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 46.14.500 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. 46.14.520. 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 ARTICLE 6. MISCELLANEOUS PROVISIONS.

30 Sec. 46.14.800. PUBLIC RECORDS. Except as provided in AS 46.14.810, permits,
31 permit applications, emissions and monitoring reports, compliance reports, certifications, and

1 monitoring, reporting, and quality assurance plans in the department's possession and control are
2 available to the public for inspection and copying.

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

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

9 (2) the records relate to production figures, sales figures, processes, or production
10 techniques of the owner and operator that are entitled to protection as trade secrets.

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, regulation, term, or condition violated is a separate and distinct
23 offense. If a violation of a provision, regulation, term, or condition continues from day to day,
24 each day is a separate offense. In determining the amount of a penalty assessed under this
25 section, the department shall consider the effect of the offense on the public health or the
26 environment, prior history of compliance or noncompliance with this chapter, the need to deter
27 future offenses, the economic benefit of noncompliance realized by the offender, and other factors
28 that the department considers relevant. The department shall, by regulation, prepare, publish, and
29 make available to interested persons, a penalty policy describing the factors to be considered in
30 setting penalties, the methods 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 request the
27 attorney general to commence a judicial action or take other appropriate steps to bring an action
28 to collect the penalty. If the department prevails in court, the court shall 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 this chapter.

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 a residential dwelling or a commercial or industrial plant, workplace, or shop;

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

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

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

9 (7) "construction permit" means a permit under AS 46.14.205(a);

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 could not
4 reasonably be 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 that emits or has the potential to emit at
10 least

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

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

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

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

17 (20) "operating permit" means a permit under AS 46.14.205(b);

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

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

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

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

- 1 (A) a one-time, accidental release of an air contaminant; or
2 (B) the fugitive emissions specifically exempted under the department's
3 regulations;

4 (25) "reconstruct" means to replace components of a facility with new components
5 to such an extent that the fixed capital cost of the new components exceeds 50 percent of the
6 fixed capital cost that would be required to construct a comparable entirely new facility;

7 (26) "register" or "registration" means vehicle registration under AS 28.10;

8 (27) "regulated air contaminant" means

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

11 (B) oxides of nitrogen;

12 (C) a volatile organic compound; and

13 (D) a pollutant that is addressed by a standard adopted under 42 U.S.C.
14 7411 - 7412 (Clean Air Act, sec. 111 - 112);

15 (28) "small business facility" means a facility that

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

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

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

20 (29) "source" means a device, process, activity, or equipment that causes, or could
21 cause, a release of an air contaminant;

22 (30) "TPY" means tons per year.

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

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

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

29 Sec. 28.10.423. EMISSION CONTROL INSPECTION PROGRAM FEES. In addition
30 to the annual registration fee specified in AS 28.10.421, a \$1 fee is imposed upon every vehicle
31 required to be inspected under an emission control program established under AS 46.14.300 or

1 46.14.500 [AS 46.03.210]. This fee shall be collected at the same time and in the same manner
2 as the registration fee.

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

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

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

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

- 10 (1) provide transportation systems;
- 11 (2) provide water pollution control;
- 12 (3) provide air pollution control in accordance with AS 46.14.500 [AS 46.03.140 -
13 46.03.230];
- 14 (4) license day care facilities;
- 15 (5) license, impound, and dispose of animals.

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

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

- 19 (1) provide transportation systems;
- 20 (2) regulate the offering for sale, exposure for sale, sale, use, or explosion of
21 fireworks;
- 22 (3) license, impound, and dispose of animals;
- 23 (4) subject to AS 29.35.050, provide garbage, solid waste, and septic waste
24 collection and disposal;
- 25 (5) provide air pollution control under AS 46.14.500 [IN ACCORDANCE WITH
26 AS 46.03.140 - 46.03.230];
- 27 (6) provide water pollution control;
- 28 (7) participate in federal or state loan programs for housing rehabilitation and
29 improvement for energy conservation;
- 30 (8) provide for economic development;
- 31 (9) provide for the acquisition and construction of local service roads and trails

1 under AS 19.30.111 - 19.30.251;

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

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

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

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

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

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

14 (1) provide transportation systems;

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

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

18 (4) provide water pollution control;

19 (5) license day care facilities.

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

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

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

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

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

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

- 1 (3) hazardous waste permits under AS 46.03.299 and 46.03.302;
- 2 (4) plan approvals and permits for sewerage system and treatment works and
- 3 wastewater disposal systems, and plan approvals for drinking water systems, under AS 46.03.720;
- 4 (5) oil discharge financial responsibility approvals under AS 46.04.040;
- 5 (6) oil discharge contingency plan approvals under AS 46.04.030;
- 6 (7) water and wastewater operator training under AS 46.30.

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

8 (44) Department of Environmental Conservation, except to the extent that

9 AS 44.62.360 - 44.62.400 are inconsistent with the manner in which proceedings are initiated

10 under the provisions of AS 46.03 and AS 46.14;

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

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

13 AS 46.03.250 - 46.03.314, AS 46.14, or a regulation, a lawful order of the department, or a

14 permit, approval, or acceptance, or term or condition of a permit, approval, or acceptance issued

15 under AS 46.03.250 - 46.03.314 or AS 46.14 is liable, in a civil action, to the state for a sum

16 to be assessed by the court of not less than \$500 nor more than \$100,000 for the initial violation,

17 nor more than \$10,000 for each day after that on which the violation continues, and that shall

18 reflect, when applicable,

19 (1) reasonable compensation in the nature of liquidated damages for any adverse

20 environmental effects caused by the violation, that shall be determined by the court according

21 to the toxicity, degradability and dispersal characteristics of the substance discharged, the

22 sensitivity of the receiving environment, and the degree to which the discharge degrades existing

23 environmental quality;

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

25 correction of the violation;

26 (3) the economic savings realized by the person in not complying with the

27 requirement for which a violation is charged; and

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

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

30 Sec. 46.03.765. INJUNCTIONS. The superior court has jurisdiction to enjoin a violation

31 of this chapter, AS 46.04, [OR] AS 46.09, AS 46.14, or of a regulation, a lawful order of the

1 department, or permit, approval, or acceptance, or term or condition of a permit, approval, or
2 acceptance issued under this chapter, AS 46.04, [OR] AS 46.09, or AS 46.14. In actions brought
3 under this section, temporary or preliminary relief may be obtained upon a showing of an
4 imminent threat of continued violation, and probable success on the merits, without the necessity
5 of demonstrating physical irreparable harm. The balance of equities in actions under this section
6 may affect the timing of compliance, but not the necessity of compliance within a reasonable
7 period of time.

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

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

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

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

18 (1) violates a provision of this chapter, AS 46.04, [OR] AS 46.09, or AS 46.14,
19 a regulation or order of the department, or a permit, approval, or acceptance, or a term or
20 condition of a permit, approval, or acceptance issued under this chapter, AS 46.04, [OR]
21 AS 46.09, or AS 46.14;

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (a) The state has a lien for expenditures by the state from the oil and hazardous substance
 26 release response fund or from any other state fund, for the costs of response, containment,
 27 removal, or remedial action resulting from an oil or hazardous substance release [SPILL], or,
 28 with respect to response costs, the substantial threat of a release of oil or a hazardous substance
 29 against all property owned by a person who is determined by the commissioner to be liable for
 30 the expenditures under this chapter, AS 46.03, AS 46.04, AS 46.14, 42 U.S.C. 9607, or other
 31 state or federal law. The lien includes interest, at the maximum rate allowable under

1 AS 45.45.010(a), from the date of the expenditures. The state may file an action in a court of
2 competent jurisdiction in order to foreclose on the lien.

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

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

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

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

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

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

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

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

27 * Sec. 27. AS 46.03.140, 46.03.150, 46.03.160, 46.03.170, 46.03.180, 46.03.190, 46.03.210,
28 46.03.220, 46.03.225, 46.03.230, and 46.03.245 are repealed.

29 * Sec. 28. REGULATIONS. The Department of Environmental Conservation may adopt regulations
30 as authorized under AS 46.14, enacted by sec. 4 of this Act, and other statutory authority, to implement
31 changes made by this Act. Regulations adopted under this section may not take effect until the enabling

1 statute takes effect under sec. 31 or sec. 32 of this Act.

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

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

6 * Sec. 31. AS 46.14.010, 46.14.020, 46.14.200(a) and (c) - (e), 46.14.205(a)(1) - (3) and (5),
7 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,
8 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 -
9 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
10 take effect immediately under AS 01.10.070(c).

11 * 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,
12 46.14.265, 46.14.275, 46.14.285, and 46.14.290, enacted by sec. 4 of this Act, take effect November 15,
13 1993.

Post-it™ brand fax transmittal memo 1071		# of pages > 3
To Terry	From	Ronan
Co. Senate Resources	Co.	NFIB
Dept. SB 383	Phone #	789-4278
Fax # 465-3922	Fax #	789-3433

NFIB Alaska

National Federation of Independent Business

POSITION PAPER

OF

NATIONAL FEDERATION OF INDEPENDENT BUSINESS
(NFIB/ALASKA)

TO THE

SENATE RESOURCES COMMITTEE

MARCH 27, 1992

ON

SB 383

AN ACT RELATING TO AIR QUALITY CONTROL AND THE PREVENTION, ABATEMENT, AND CONTROL OF AIR POLLUTION; RELATING TO CIVIL AND CRIMINAL PENALTIES, DAMAGES, AND OTHER REMEDIES FOR AIR QUALITY CONTROL VIOLATIONS; RELATING TO USE OF THE OIL AND HAZARDOUS SUBSTANCE RELEASE RESPONSE FUND; AND PROVIDING FOR AN EFFECTIVE DATE.

9159 Skywood Lane
Juneau, AK 99801



The Guardian of Small Business

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, MY NAME IS RESA JERREL, AND I REPRESENT THE NATIONAL FEDERATION OF INDEPENDENT BUSINESS - NFIB/ALASKA. I WOULD LIKE TO THANK YOU FOR THE OPPORTUNITY TO COMMENT ON SB 383.

THERE ARE SEVERAL AREAS OF THE BILL WE ARE CONCERNED ABOUT AND NEED TO BE AMENDED:

- SECTIONS THAT GO BEYOND THE REQUIREMENTS OF THE CLEAN AIR ACT AMENDMENTS OF 1990. THE SECTIONS THAT GIVE THEM ADDITIONAL AUTHORITY TO: REGULATE MORE TYPES OF SOURCES; SET MORE STRINGENT EMISSION STANDARDS; REGULATE MORE KINDS OF AIR POLLUTANTS; AND, TO IMPOSE ADMINISTRATIVE PENALTIES.
- THE LANGUAGE THAT SAYS THEY "MAY" EXEMPT A SOURCE WHEN THE FEDERAL ADMINISTRATOR HAS EXEMPTED A SOURCE (PAGE 3, LINE 2); AND,
- THE SECTION THAT GIVES THEM AUTHORITY TO SET A SHORTER TIME LIMIT THAN 12 MONTHS FOR APPLICATION DEADLINES (PAGE 5, LINE 6); AND,

FINALLY, THE LANGUAGE FOR THE FEE STRUCTURE NEEDS TO BE CLEARLY SPELLED OUT. HISTORICALLY, THE DEPARTMENT HAS BEEN REGULATING MOSTLY LARGE CORPORATIONS. BY THEIR OWN ESTIMATION, 600 SMALL BUSINESSES THAT HAVE NOT BEEN PREVIOUSLY REGULATED, SOON WILL BE REGULATED. WHAT MAY SEEM LIKE A SMALL OR REASONABLE FEE TO THE PERSONNEL AT THE DEPARTMENT, OR A LARGE CORPORATION COULD BE VERY ONEROUS TO A SMALL BUSINESS OWNER. LANGUAGE NEEDS TO BE INCLUDED IN THE BILL THAT STATES:

THE FEES ARE TO BE NO MORE THAN NECESSARY TO MEET THE FEDERAL REQUIREMENTS FOR FUNDING OF THE PROGRAM.

ALSO, ON PAGE 29, LINE 15, LANGUAGE NEEDS TO BE ADDED THAT STATES:

ANY REGULATIONS ADOPTED UNDER THIS CHAPTER SHALL NOT BE MORE STRINGENT THAN FEDERAL LAW OR REGULATIONS.

THE STATES OF IDAHO HAS ADOPTED THIS LANGUAGE FOR FOR SHALLOW INJECTION WELLS. THE STATE OF UTAH IN A 15 PAGE LAW HAS ADOPTED THE

SAME PRINCIPLE FOR RADIATION CONTROL, WATER POLLUTION CONTROL, SAFE DRINKING WATER, AIR CONSERVATION, AND SOLID AND HAZARDOUS WASTE. THIS LANGUAGE IS INCLUDED IN AN OKLAHOMA CLEAN AIR ACT NOW UNDER CONSIDERATION. TWO BILLS ARE UNDER CONSIDERATION IN KENTUCKY THAT CONTAIN THIS LANGUAGE.

FOR SOME BACKGROUND INFORMATION: NFIB/ALASKA IS COMPRISED OF 3,292 SMALL AND INDEPENDENT BUSINESS OWNERS. THE LEGISLATIVE ABENDA OF NFIB/ALASKA IS DETERMINED BY OUR BALLOT. THE BALLOT IS OUR ANNUAL POLL OF OUR MEMBERSHIP ON A SERIES OF ISSUES DEEMED CRITICAL TO SMALL BUSINESS. A MAJORITY VOTE, OF THE MEMBERS IN RESPONSE TO THE POLL, SETS OUR POLICY AND POSITION ON LEGISLATIVE ISSUES.

THE FOLLOWING IS THE RESULT OF ONE OF THE QUESTIONS ON OUR 1991 POLL:

SHOULD LEGISLATION BE PASSED TO PROHIBIT THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION FROM IMPOSING ENVIRONMENTAL STANDARDS AND LIMITATIONS THAT ARE STRICTER THAN FEDERAL STANDARDS?

61.1% YES 33% NO 5.9% UNDECIDED

THANK YOU FOR THE OPPORTUNITY TO TESTIFY ON THIS VERY IMPORTANT BILL.



DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Air Quality Management

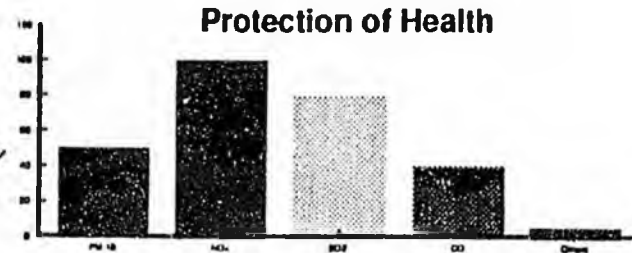


**1990 AMENDMENTS to the CLEAN AIR ACT
and their IMPACTS on ALASKA**



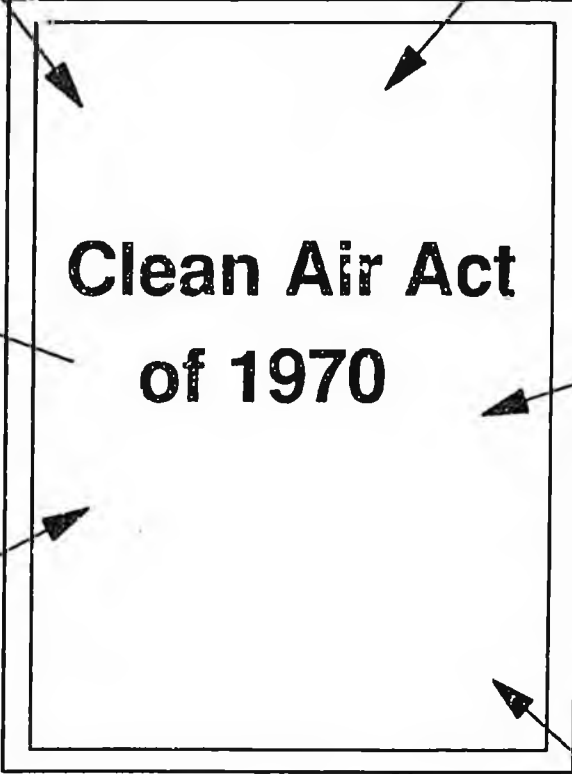
Mobile Sources

Vehicle Tailpipe Standards

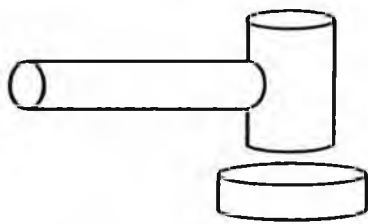


Ambient Air Quality Standards

State
Air
Quality
Control
Plan

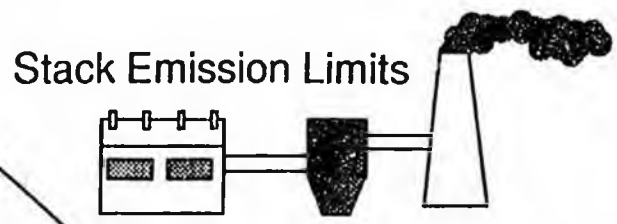


Clean up poor
Air Quality Regions



Enforcement

Civil Penalties - \$10,000/day
Criminal Penalties - \$10,000/day

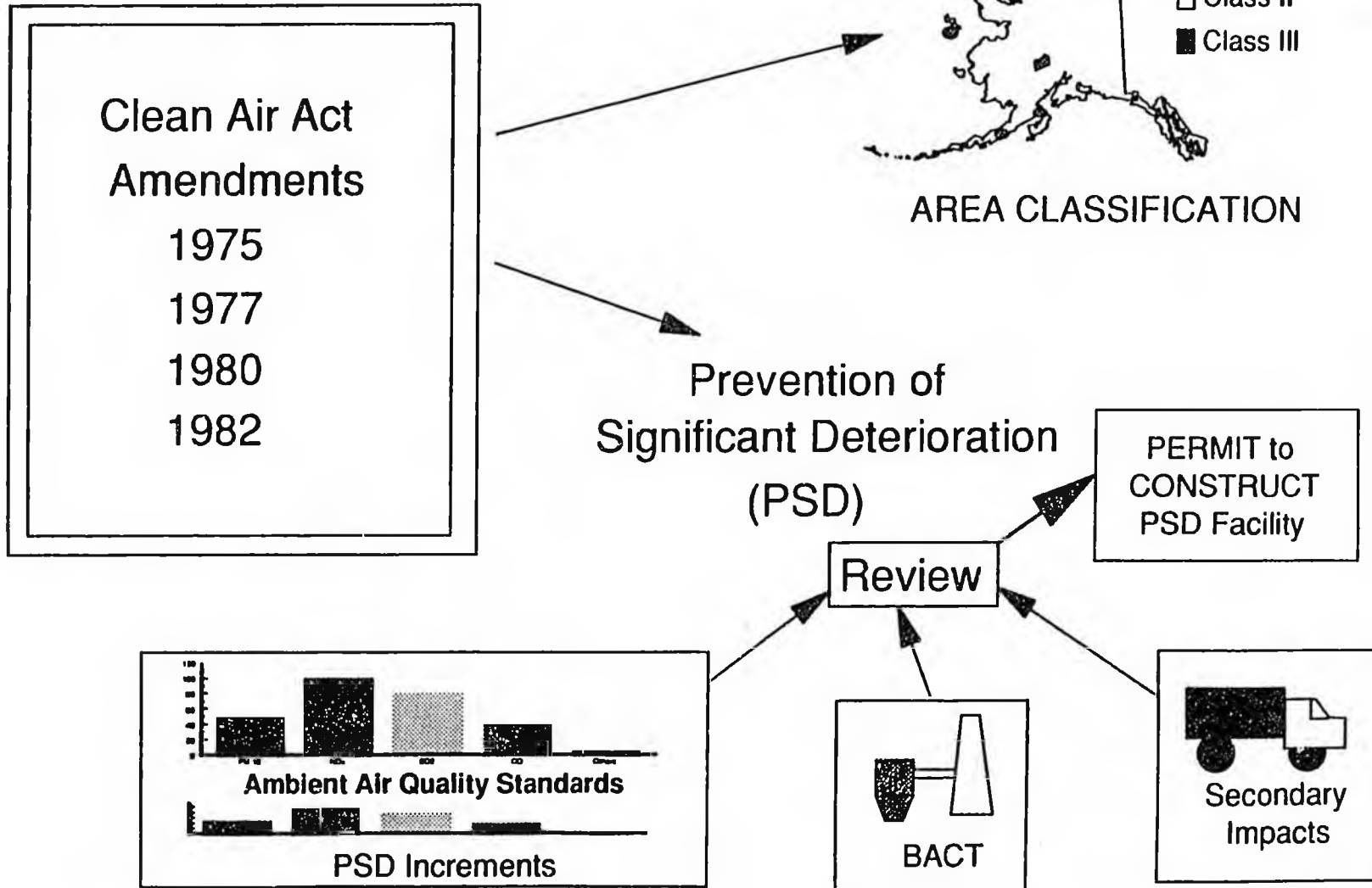


Stack Emission Limits

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





Mobile Sources
Cold Start
CO Standards
Inspections

EFFECTS OF 1990 AMENDMENTS



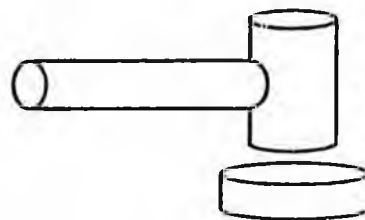
CLEAN UP OF
NON-ATTAINMENT AREAS

List of
189
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



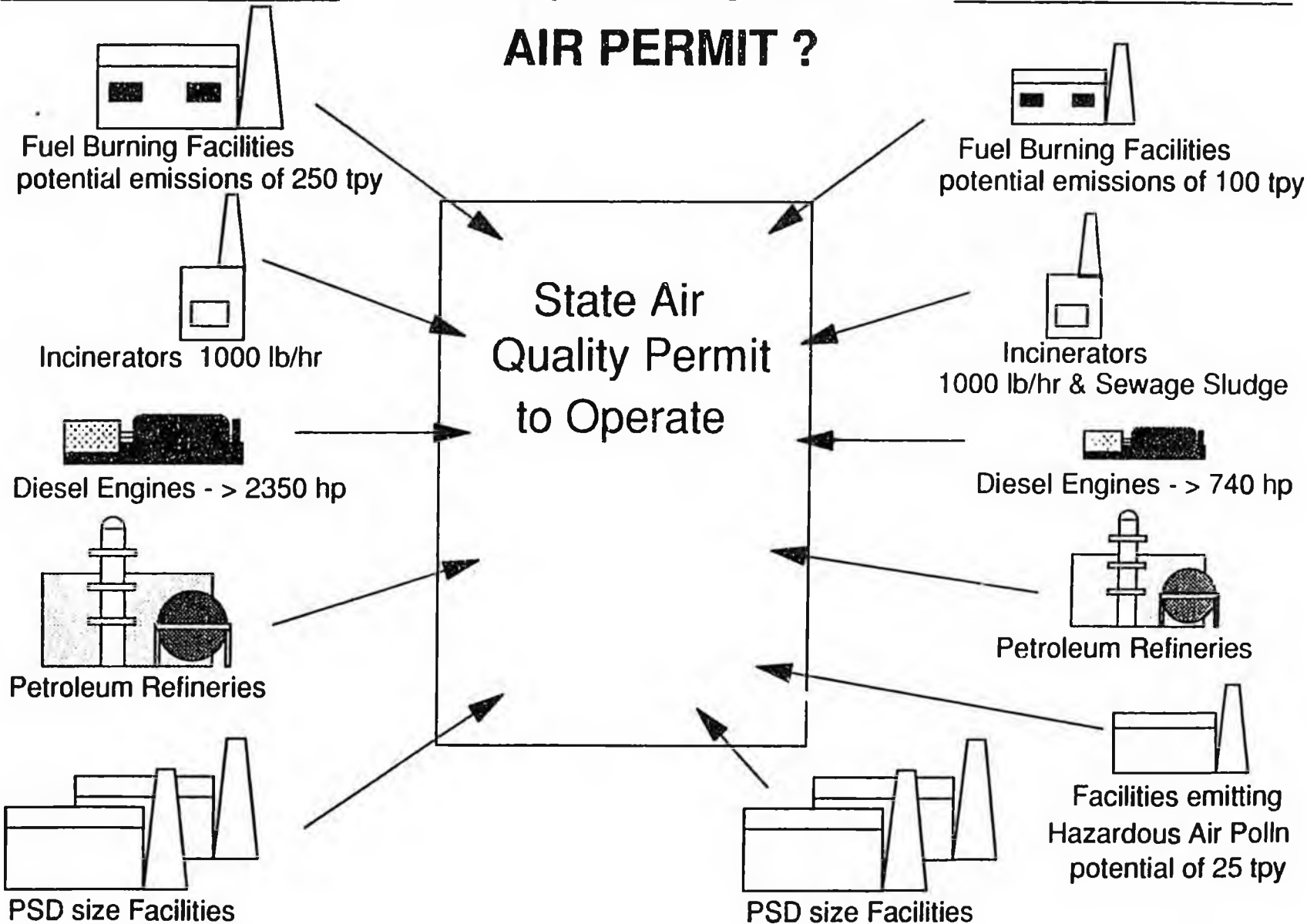
Enforcement
Civil Penalties - \$10,000/day
Criminal Penalties - \$10,000/day

Small Business
Assistance Program /
Pollution Prevention

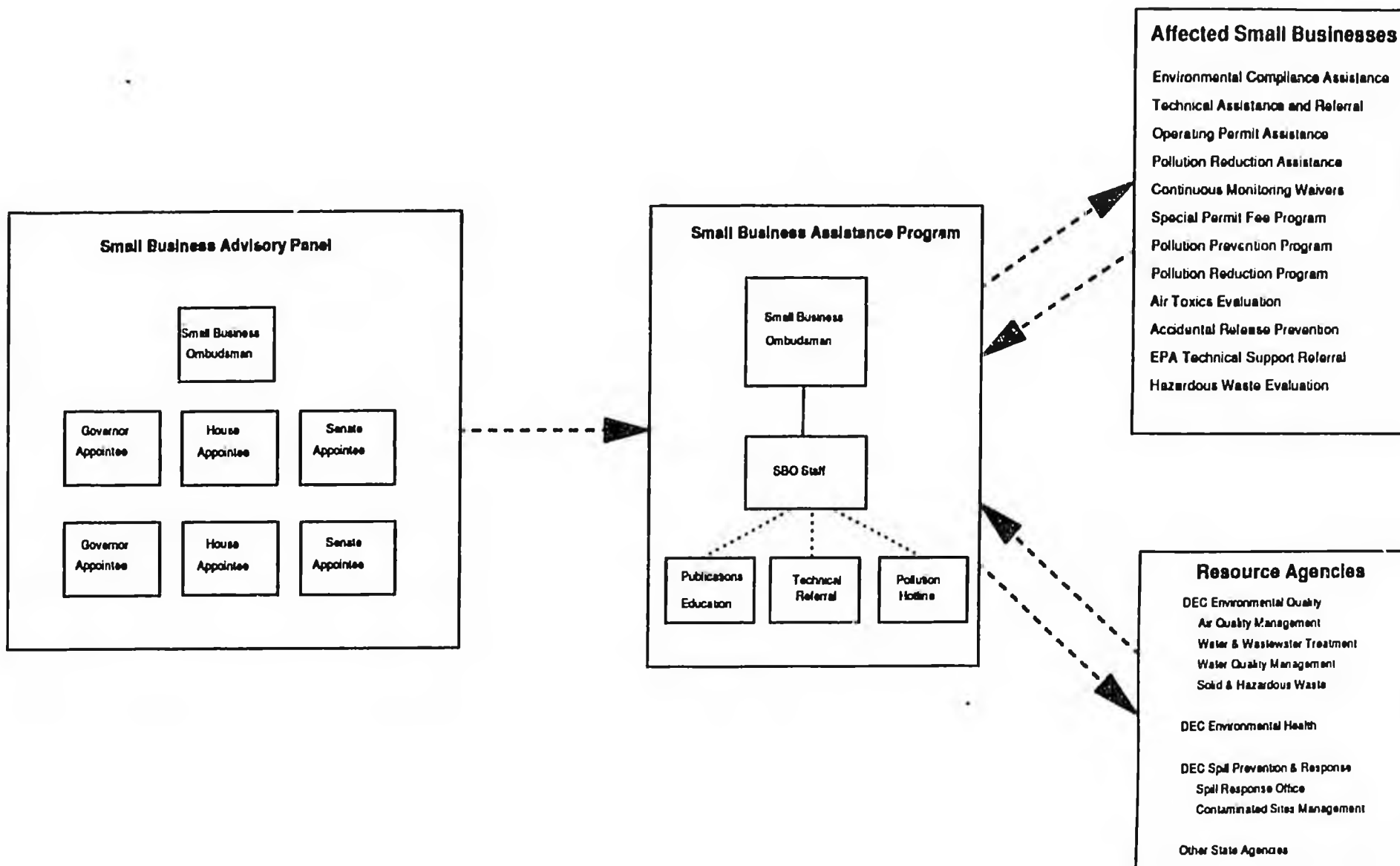
OLD CLEAN AIR ACT

WHO NEEDS AN AIR PERMIT ?

1990 CLEAN AIR ACT



Small Business Assistance Program



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

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

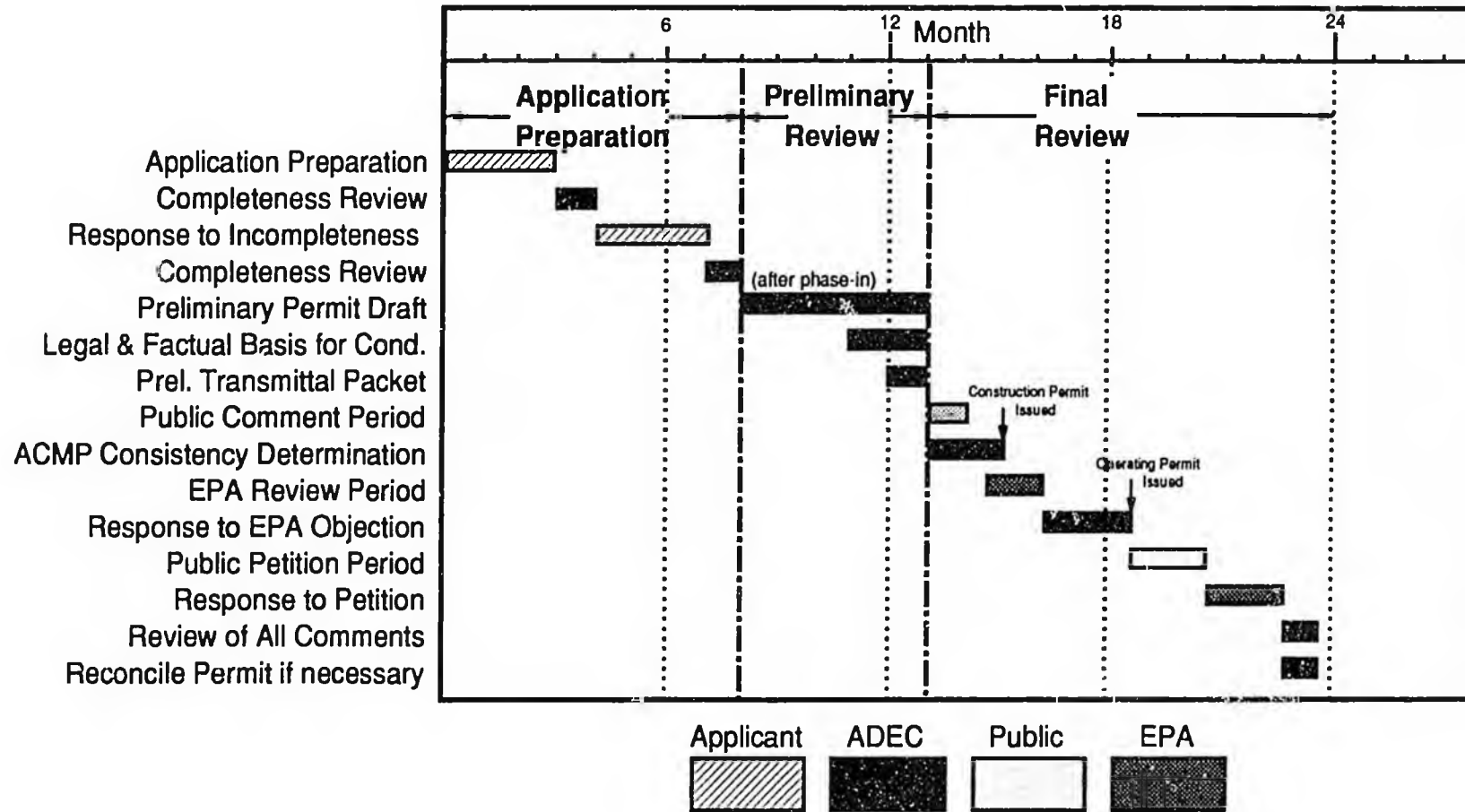
* **Ability to Reopen for Cause**

Public Comment

* **EPA Review**

* **Judicial Review of Actions**

Clean Air Act Permit Process



TITLE III SUMMARY (Hazardous Air Pollutants)

- The Clean Air Act listed 190 Hazardous Air Pollutants (HAPs) that must be regulated.

- EPA must periodically review and update this list.

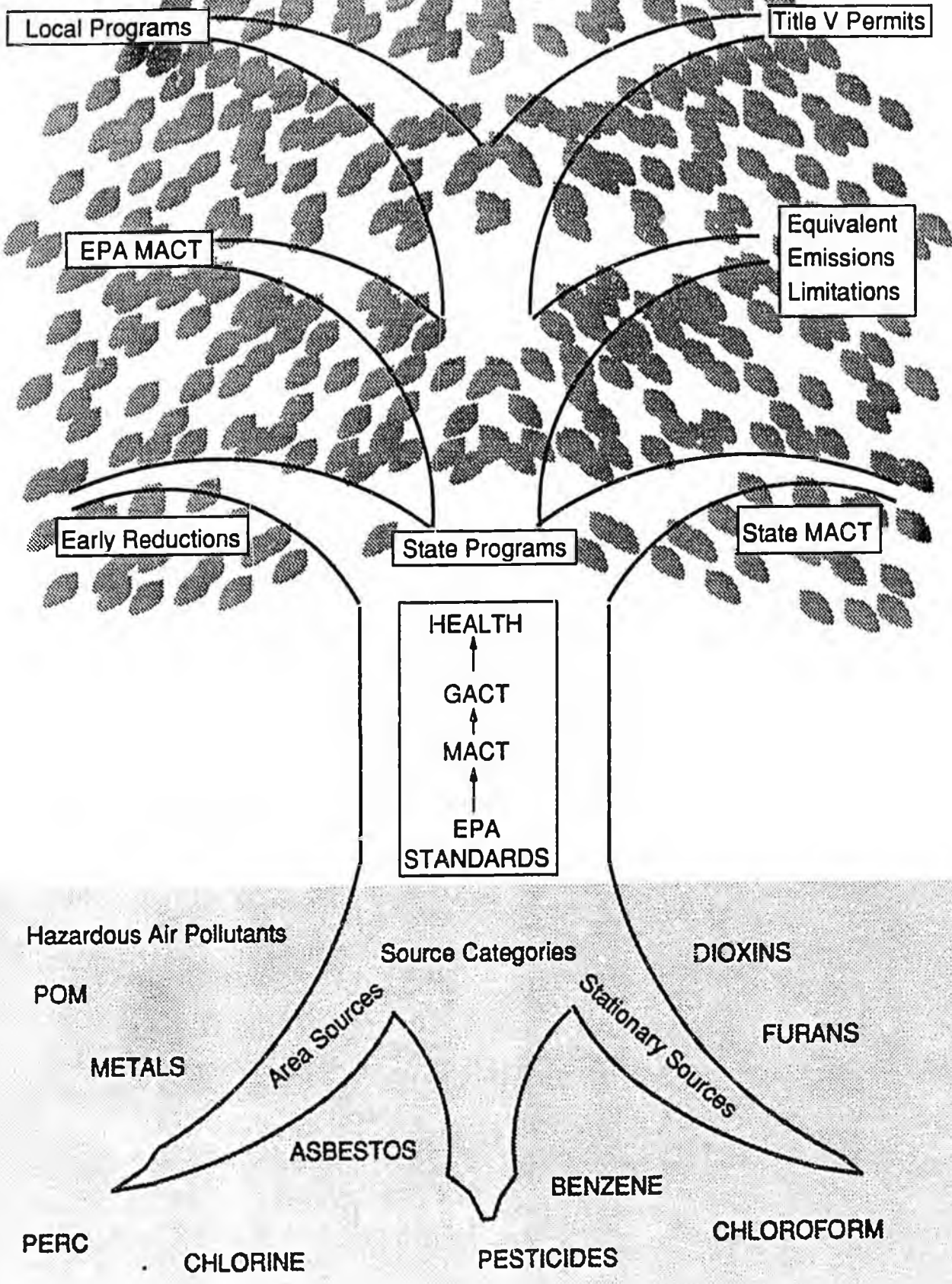
- EPA must establish "Maximum Achievable Control Technology" (MACT) for major sources of these pollutants.

- MACT means:
 - * for new sources -- "best of best"

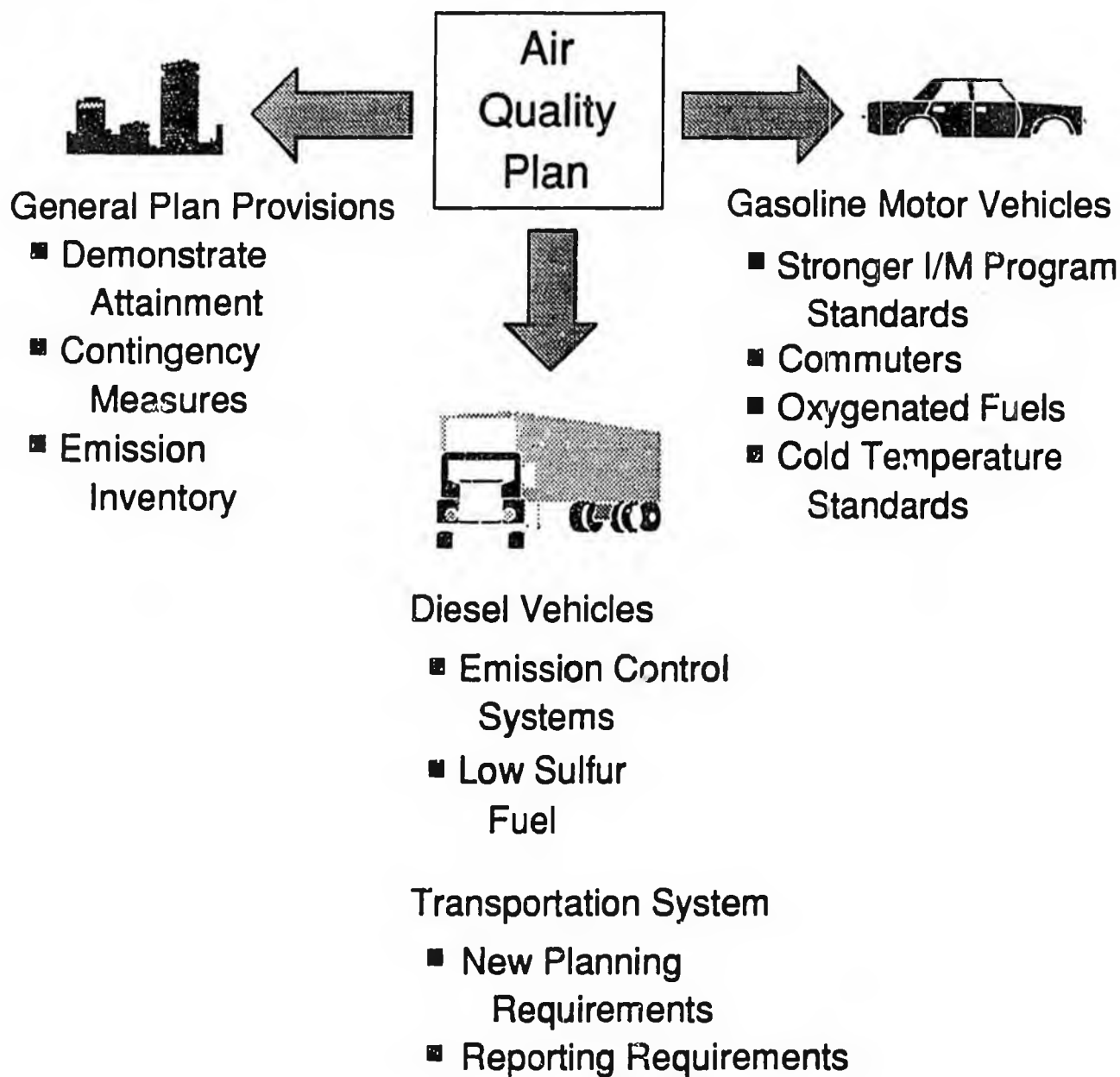
 - * for existing sources -- "average of the top 12% best controlled sources."

- Facilities may apply for a 6-year extension from MACT upon demonstration of a 90% early reduction (95% for particulates).

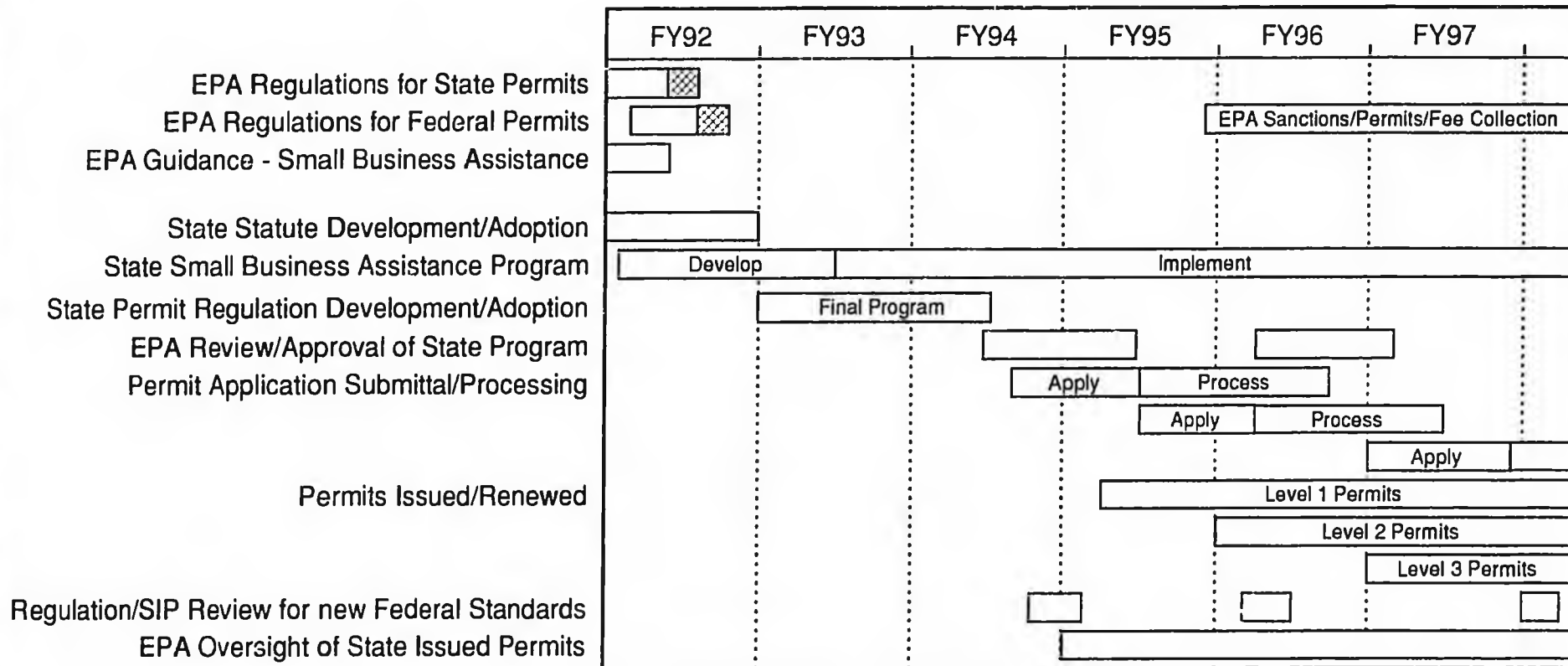
CLEANER AIR



Develop New Air Quality Plan



Permit Program Time Table



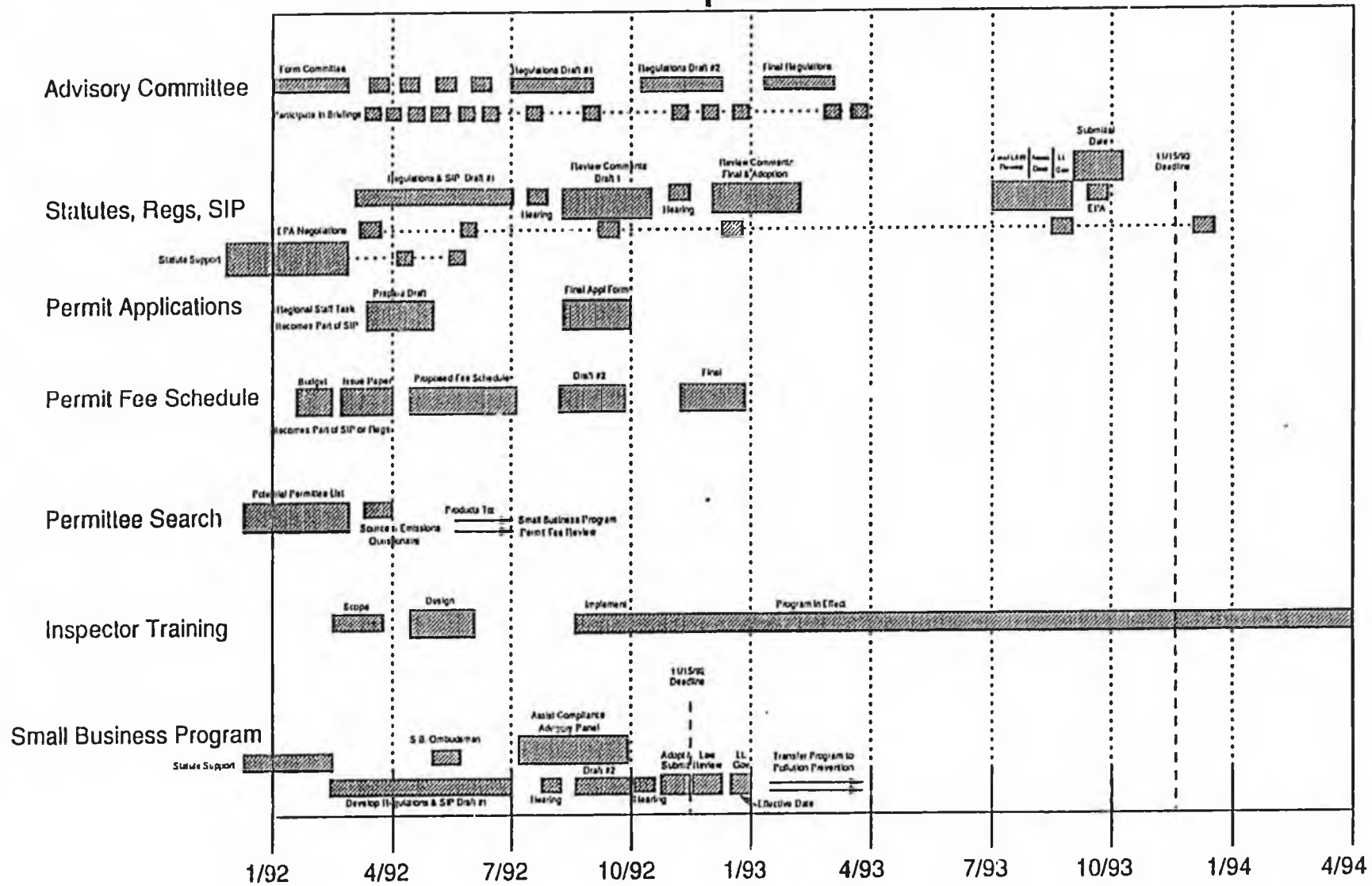
Level 1 Permits: Sources > 1000 TPY Aggregate Emissions & All PSD Permits

Level 2 Permits: Sources > 100 TPY, except General Permits

Level 3 Permits: All sources classified for General Permits

█ May be delayed up to 3 months due to federal Regulation Moratorium

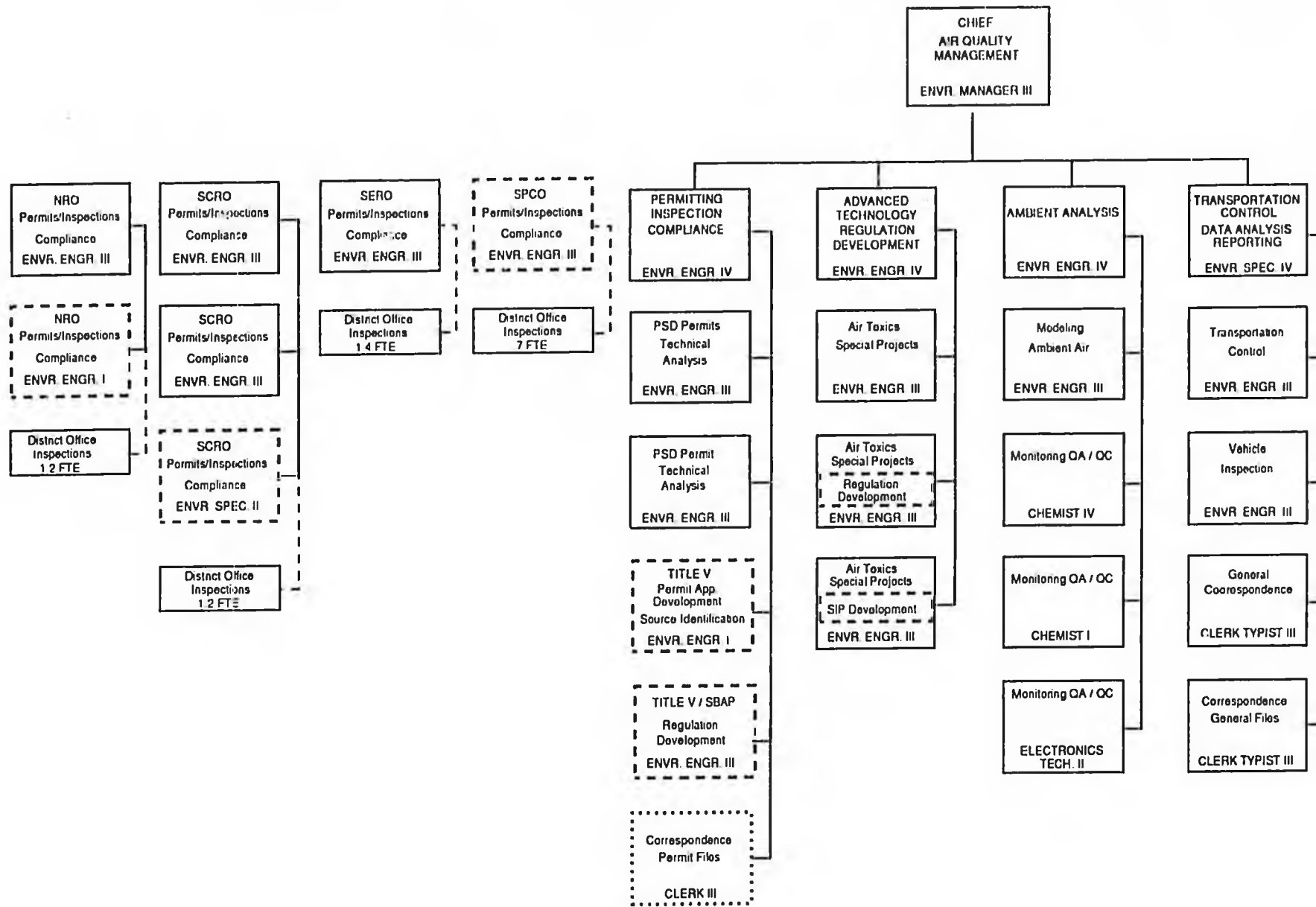
CAA 90 Title V - State Operating Permit Program Development Phase



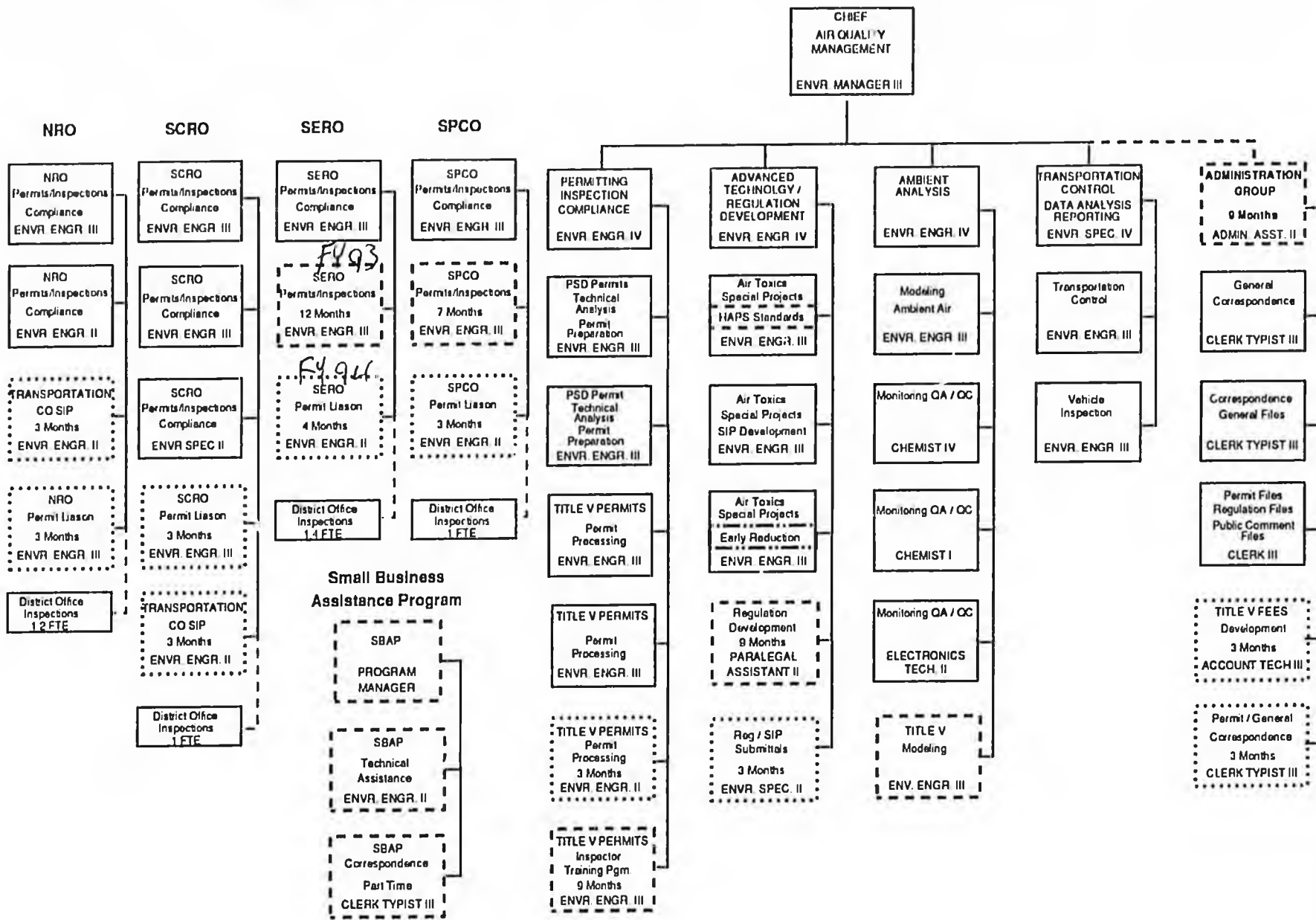
Funding for Air Program FY 92 - FY 98



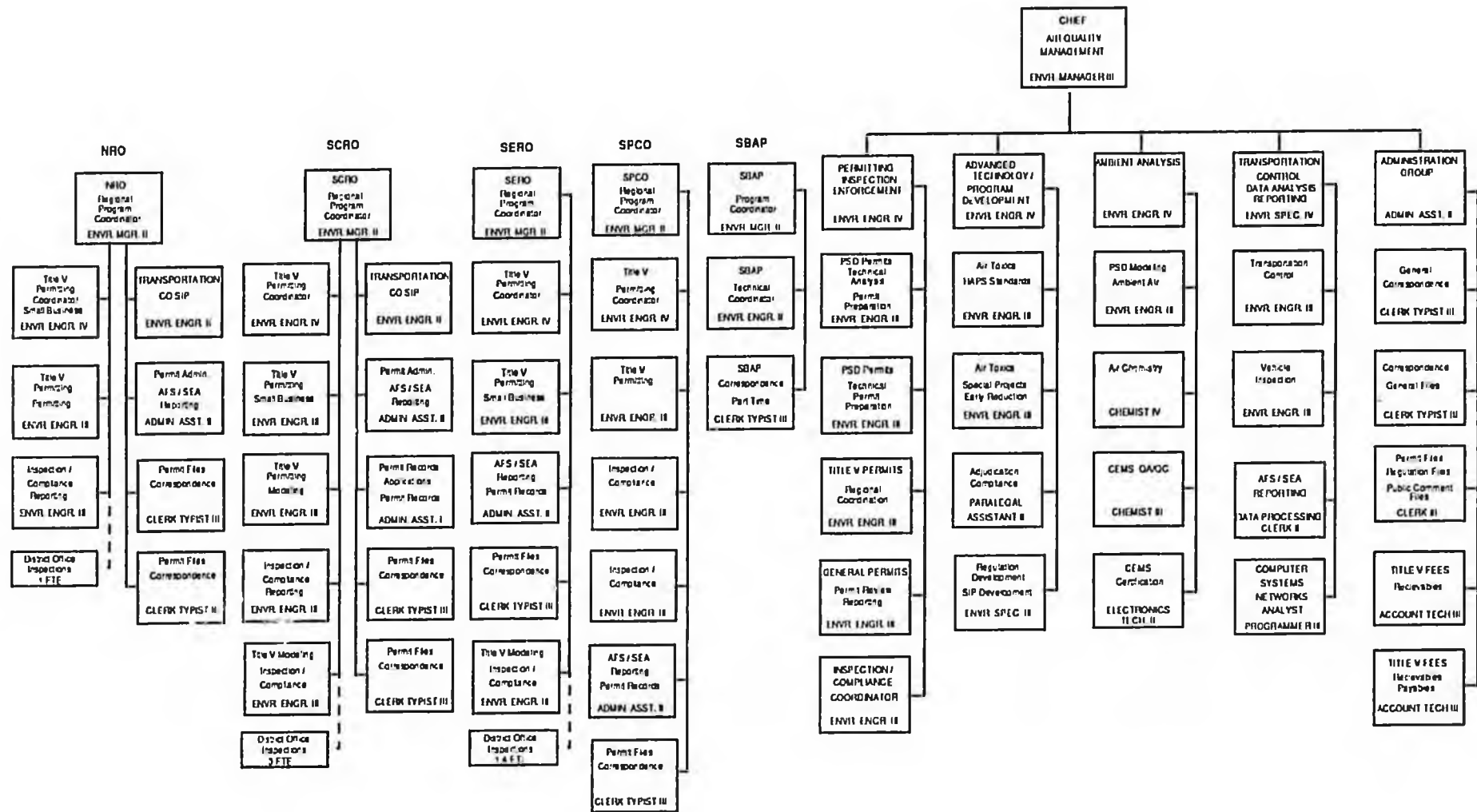
FY 92 Implementation Plan - Projected Staff



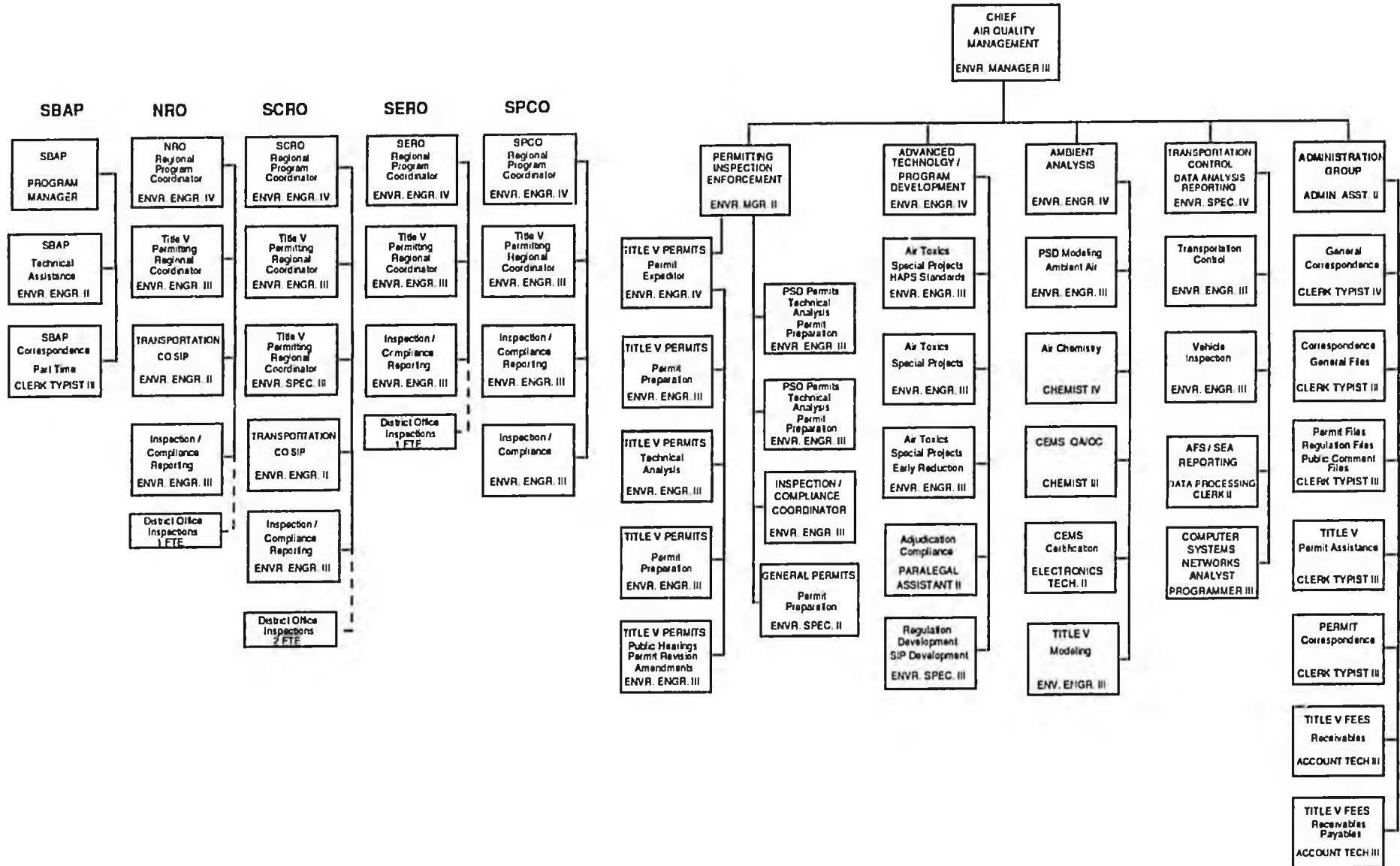
FY 93/94 Implementation Plan - Planned Staff



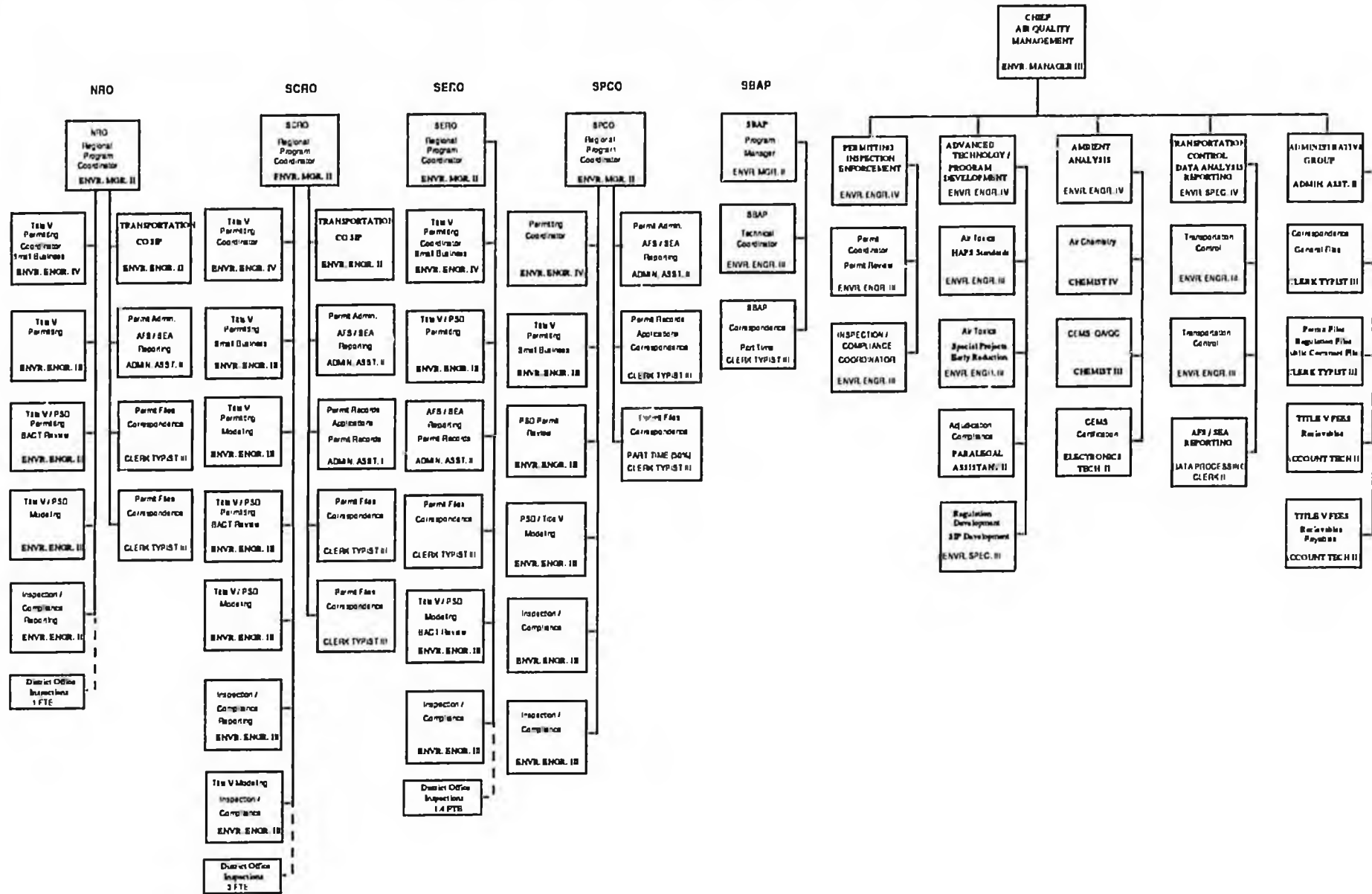
FY 96 ORGANIZATION - REGIONAL TITLE V PERMITTING



FY 96 ORGANIZATION - CENTRALIZED PERMITTING



FY 96 ORGANIZATION - REGIONAL TITLE V AND PSD PERMITTING



**DETERMINATION OF STAFFING REQUIREMENTS
Continuing Title V Permit Program**

In order to determine the staffing requirements to meet the obligations of a continuing Title V permit program, an analysis of current and future staffing requirements was undertaken.

Jurisdiction for Alaskan Air Quality Control is coordinated through the Central Office (CO) and four regional offices: Northern Regional Office (NRO), SouthCentral Regional Office (SCRO), SouthEast Regional Office (SERO), and the State Pipeline Coordinator's Office (SPCO). Currently, the Regional offices conduct inspection and enforcement activities, and write the State's Air Quality Control Permits. The Central Office coordinates the activities of the Regional Office, and does PSD permitting.

GENERAL

The first step to determine staffing requirements was to evaluate currently permitted sources. These sources were then categorized into two groups: "Major" and "Minor". These are not the EPA classifications of major and minor emitting facilities. Rather, "Major" refers to facilities which were permitted under PSD provisions or whose emissions are greater than 500 tons per year (TPY). The "Minor" category encompasses all other permitted sources.

Current Situation	NRO	SCRO	SPCO	SERO	TOTALS
Number of current Permits	32	66	27	16	141
Major Permits - PSD or >500 tpy	12	38	24	12	86
Minor Permits - PSD Avoid or <500 tpy	20	28	3	4	55

Next, an estimation of the number of permitted sources after the Title V program was made. This was derived from the following assumptions:

- 1) an estimation of the number of previously permitted facilities, which were "grandfathered" out of the permit program in the early '80s.
- 2) an estimate of the number of new classifications which will require permitting, such as NSPS sources and NESHAP sources.
- 3) an evaluation of the facilities which are currently permitted, to classify applicable sources as "Major" or "Minor" after the facilities undertake emission reductions to minimize the Title V permit fees.

One provision in the Act which might be beneficial to any permitting authority is the ability to issue General Permits. General Permits may be issued to a group of narrowly defined, similar sources. With careful definition, it may be possible to establish General Permit categories which include up to 50% of a State's minor permits.

Therefore, two scenarios are possible, which, for this analysis, are labeled **Type A** - General Permits are not possible for these Minor sources, and **Type B** - 50% of the projected Minor Sources can be permitted with General Permits.

Projected Situation	NRO	SCRO	SPCO	SERO	TOTALS
Number of Projected Permits	167	243	37	108	555
Major	60	99	29	46	234
Minor - Type A program	107	144	8	62	321
Minor - Type B program	53	72	8	31	164
General Permits - Type B program	54	72	0	31	157

INSPECTIONS

One task of the Title V permitting program is facility inspection. This task will be the responsibility of the Regional Offices. Differences in facility composition and distance from the Regional Offices result in a variation in time required for each office to perform a single inspection.

Work days reqd -Major Source Inspection	NRO	SCRO	SPCO	SERO
Travel	1.75	1.5	1.5	1.5
On-site	1.0	1.0	1.0	1.0
Reporting	1.0	1.0	1.0	1.0
Total - each major source Inspection	3.75	3.5	3.5	3.5

Work days reqd -Minor Source Inspection	NRO	SCRO	SPCO	SERO
Travel	1.0	.75	.75	.75
On-site	0.5	0.5	0.5	0.5
Reporting	0.5	0.5	0.5	0.5
Total - each minor source Inspection	2.0	1.75	1.75	2.0

Next, the number of projected permits was multiplied by the appropriate number of days to determine the number of days per year for facility inspections. The time required for Central Office inspection review was also calculated, based on 8 inspection reviews per person per day. It was also assumed that if there was a General Permit program, then 10% of the General Permits issued would be audited per year, and that General Permit facility inspections take as long as Minor source inspections.

Work days required annually - Inspections	NRO	SCRO	SPCO	SERO	CO (Review)
Major	225	346.5	101.5	161	111
Minor - Type A program	214	252	14	124	84
Minor - Type B program	106	126	14	62	43
General Permits (10% auditing)	10	14	0	8	4

Conversion from work days to Full Time equivalent Employees (FTE) was made on the assumption that 1 FTE = 200 work days.

Total FTE required	NRO	SCRO	SPCO	SERO	CO
Inspections - Type A program	2.2	3.0	0.6	1.4	1.0
Inspections - Type B program	1.7	2.4	0.6	1.2	0.8

TITLE V PERMIT RENEWALS

The next step is to determine the time required to process Title V permit renewals. The number of projected permits is reiterated here.

Projected Permits	NRO	SCRO	SPCO	SERO	CO (Total)
Number of Projected Permits	167	243	37	108	555
Major	60	99	29	46	234
Minor - Type A program	107	144	8	62	321
Minor - Type B program	53	72	8	31	164
General Permits - Type B program	54	72	0	31	157

The first assumption is that one-fifth of all Title V permits are renewed annually. The second assumption was that one person in the Regional Offices can process 20 permits annually, and that one person in the Central Office could process 25 permits annually. The increased personal capacity of the Central Office program is derived from expected gains in efficiency due to task-directed processing.

Number of Permits Renewed Annually	NRO	SCRO	SPCO	SERO	CO
Major	12	20	6	9	47
Minor - Type A program	21	29	2	12	64
Minor - Type B program	11	14	2	6	33
General Permits	11	14	0	6	31

Total FTE required	NRO	SCRO	SPCO	SERO	CO
Permit Renewal processing-Type A program	1.7	2.5	0.4	1.1	4.4
Permit Renewal processing-Type B program	1.4	2.1	0.4	0.9	4.0

PERMIT REVISIONS

A number of sources will seek permit modifications, minor permit amendments, and administrative permit amendments, which would allow operational change, or revision of facility information. A conservative estimate based on past performance within each region provides the following estimate:

Permit Revisions	NRO	SCRO	SPCO	SERO	CO
Permit modifications	3	5	5	3	16
Minor Amendments	4	5	3	2	14
Administrative Amendments	12	20	6	9	47
Total FTE required					
Permit Revisions - Type A or B	0.6	0.7	0.4	0.3	1.1

PSD PERMITTING

In addition to Title V permitting, a number of sources will seek PSD permits. A PSD permit is required to construct new facilities, or to make major modifications to an existing facility, such as adding new air pollutant emitting equipment. Currently, PSD review is conducted by the Central Office. An estimate, based on past applications to the Central Office and each region, provides the following:

PSD Permits	NRO	SCRO	SPCO	SERO	CO
Number of Projected PSD Permits	1	2	3	1	7
FTE required - PSD Permit processing	0.5	1.0	1.5	0.5	2.0

OTHER ACTIVITIES

In addition to Title V permitting, other activities are required. The three most significant are: Facility Operating Report reviews, compliance related activities, and non-Title V permitting (such as Open burn approvals and Flare permits).

Other Activities	NRO	SCRO	SPCO	SERO	CO
Non-Title V permits (Flare, Open Burn, etc.)	14	17	11	14	0
Compliance related	24	15	40	31	12
Number of Operating Report Reviews					
Type A program	217	342	64	154	100(Audit)
Type B program (10% auditing of GPs)	173	271	60	123	100(Audit)
Total FTE required					
Other Activities -Type A	0.8	1.2	0.7	0.8	0.3
Other Activities -Type B	0.8	1.1	0.7	0.8	0.3

SUMMARY

With these calculations, it is now possible to determine the FTEs required for a continuing Title V permit program. The calculations are summarized below:

Total FTE required - Type A program	NRO	SCRO	SPCO	SERO	CO
Inspections	2.2	3.0	0.6	1.4	1.0
Permit Renewal processing	1.7	2.5	0.4	1.1	4.4
Permit Revisions	0.6	0.7	0.4	0.3	1.1
PSD Permit processing	0.5	1.0	1.5	0.5	2.0
Other Activities	0.8	1.2	0.7	0.8	0.3
Total FTE required - Type B program	NRO	SCRO	SPCO	SERO	CO
Inspections	1.7	2.4	0.6	1.2	0.8
Permit Renewal processing	1.4	2.1	0.4	0.9	4.0
Permit Revisions	0.6	0.7	0.4	0.3	1.1
PSD Permit processing	0.5	1.0	1.5	0.5	2.0
Other Activities	0.8	1.1	0.7	0.8	0.3

Currently, three alternatives are being evaluated: Central Office Permitting, Regional Office Title V permitting and Regional Office permitting for Title V and PSD. For the Central Permitting case, the Regional Offices will still be responsible for two categories: Inspections, and Other Required Activity. The Central Office will have the responsibility for Title V and PSD permit processing and revision, and oversight responsibilities for inspections and other activities.

Total FTE - Central Permitting	NRO	SCRO	SPCO	SERO	CO
Type A program	3.0	4.2	1.3	2.2	8.8
Type B program	2.5	3.5	1.3	2.0	8.2

For the case of Regional Office Title V Permitting, the Regional Offices will still be responsible for Inspections, and other required activity, and will have authority for Title V permit processing and revision. The Central Office will have the responsibility for PSD permit processing and revision, and oversight responsibilities in all other areas.

Total FTE - Regional Title V Permitting	NRO	SCRO	SPCO	SERO	CO
Type A program	5.3	7.4	2.1	3.6	5.5
Type B program	4.5	6.3	2.1	3.2	5.1

For the case of Regional Office Title V and PSD Permitting, the Regional Offices will be responsible for Inspections, and other required activity, and will have authority for Title V and PSD permit processing and revision. The Central Office will have oversight responsibilities for all areas.

Total FTE-Regional Title V & PSD Permits	NRO	SCRO	SPCO	SERO	CO
Type A program	5.8	8.4	3.6	4.1	3.5
Type B program	5.0	7.3	3.6	3.6	3.1

FY 92 PERMIT DEVELOPMENT

TASK	SKILLS	EFFORT
- Revise statutes	Ass't AG; Paralegal Ass't; Env. Engr; DEC Mgmt; Clerical	.25 FTE (.15 DOL)
- Identify/Assist New Permittees	Env. Engr (CO & RO); Clerical	.50
- Cooperative Participation for Regulation Development	Env. Engr (CO & RO); Clerical	1.50
- Prepare Draft Regulations	Ass't AG; Paralegal Ass't; Env. Engr; Clerical	
1. Small Business Assistance		(.20 DOL) .50
2. Permits ¹		(.10 DOL) .75
- Begin Drafting of Air Quality Plan	Env. Engr; Clerical	.25
- Re-directed Tasks		
1. Central Office Assistance for Regional Offices		.75
2. Air Toxics Development		
3. Compliance Reporting ¹		.20
4. District Office Support to Regional Offices		.50
Summary		5.20 FTE
Adjustments via Contracts		< .50>
NET INCREASE FY92		4.75 FTE

Notes:

¹ These tasks can be conducted through contracts.

FY 93 PERMIT DEVELOPMENT

TASK	SKILLS	EFFORT
- Cooperative Participation for Regulation Development	Env. Engr (CO & RO); Clerical	2.00 FTE
- Prepare Draft and Final Regulations	Ass't AG; Paralegal Ass't; Env. Engr.	.75 (.20 DOL)
- Prepare Draft and Final Air Quality Control Plan	Env. Engr (CO & RO); Clerical	2.75
- Negotiate with EPA on Regulations and Control Plan	Ass't AG; Env. Engr; ADEC Mgmt.	.30 (.10 DOL)
- Initiate Small Business Assistance Program	Env. Engr; Clerical	1.00
- Provide Assistance to Permit Applicants	Env. Engr (RO & CO); Clerical	1.25
- Establish Fiscal System ¹ for Permit Fee Programs	Acct. Tech.	0.25
- Begin Hazardous Air Pollutant Standards and Reduction Programs	Env. Engr.	0.25
- Begin Review of Permit Applications	Env. Engr.	0.75
SUM: All CAA Permit Development		9.3 FTE
<New Positions FY 92>		<6.0>
<Potential New Contractual>		<.25>
NET INCREASE FY 93		3.0 FTE

Notes:

¹These tasks can be conducted through contracts.

FY 94 TRANSITION PHASE

TASK	SKILLS	EFFORT
- Complete Adoption of Regs and Control Plan	Ass't AG; Paralegal Ass't; Env. Engr.	(.20 DOL) .20
- Complete Negotiations with EPA	Env. Engr; Paralegal Ass't	.25
- Initiate Level II Permit Applications	Env. Engr. (CO & RO); Clerical	.50
- Provide Permit Assistance to Levels I and II Applicants	Env. Engr; Clerical	4.00
- Review and Issue Level I Permits	Env. Engr; Clerical; Paralegal Ass't	5.00
- Train and Implement Regional Permit Liaisons	Env. Engr.	.75
- Continue Small Business Assistance	Env. Spec.	1.0
- Revise Regulations and Control Plan for Hazardous Air Pollutants NSPS	Ass't AG; Env. Engr; Paralegal Ass't	.75 (.15 DOL)
- Implement Permit Fee Collection System ¹	Contractor; Admin. Ass't	1.75
- Enhance Compliance Reporting for New Permits ¹	Contractor; Env. Engr; Admin. Ass't.	1.25
- Begin Inspection and Compliance Certification	Env. Engr (CO & RO); Clerical	1.25
SUM: All CAA Permit Development <New Positions FY 92 and 93> <Contractor Assistance> Net Increase FY 94		17.10 FTE <11.00> <2.20> 4.0 FTE

Notes:

¹ These tasks can be conducted through contracts.

IMPLEMENTATION PLAN

FISCAL YEAR	FTE
92	28.0
92 (rev.)	34.0
93	53.0
94	53.0

OPERATIONAL PLAN

OPTION	FTE
Central Office Permitting	58.5
Regional Office Permitting	65.4
Regional Permitting and PSD	69.4

Interim Program Receipts Matrix

Facility Category	Number Permitted	Cost each	Total Receipts
Incinerators	6	\$ 3,000	\$ 18,000
Electric Utilities < 500 tpy	14	\$ 3,000	\$ 42,000
Electric Utilities 500-2000 tpy	4	\$ 8,000	\$ 32,000
Electric Utilities 2000-4000 tpy	2	\$ 25,000	\$ 50,000
Electric Utilities > 4000 tpy	1	\$ 50,000	\$ 50,000
Asphalt plants	22	\$ 3,000	\$ 66,000
Soil Remediation Units	12	\$ 6,000	\$ 72,000
Fuel Burning < 500 tpy	23	\$ 3,000	\$ 69,000
Fuel Burning 500-2000 tpy	19	\$ 9,000	\$ 171,000
Fuel Burning 2000-4000 tpy	7	30,000	\$ 210,000
Fuel Burning > 4000 tpy	9	60,000	\$ 540,000
		Total	\$ 1,320,000

SB - 383

ALASKA AIR QUALITY STATUTES

SECTION-BY-SECTION ANALYSIS

Prepared by Alaska Department of Environmental Conservation
2/6/92

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

FEDERAL REQUIREMENT:

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

STATE INTENT & EXPLANATION:

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

standards for health protection. Sub-section (a) incorporates the language from the existing AS 46.03.140 proposed for repeal. Subsection (b) is new language to clarify authorities of the department to establish emission standards based upon either a) the need to prevent excessive ground level concentrations of an air contaminant or b) 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.

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 scheduled to do so under the Clean Air Act.

CAA section 112(l) specifies minimum criteria for state programs executing the section 112 provisions of the Clean Air Act. Section 112(l)(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 AND REPORTING

OBJECTIVE:

This section incorporates the existing language from AS 46.03.150 (proposed for repeal) to

FEDERAL REQUIREMENT:

CAA Section 504 presents the minimum contents of a permit which includes reporting of

STATE INTENT AND EXPLANATION :

Retain existing authorities and meet new minimum federal requirement.

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.

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.

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 PROHIBITED

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 PERMIT APPLICABILITY

OBJECTIVE:

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

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 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

Please note the importance and special meaning of the term "major facility" used in subsection (b) and defined in section 46.14.900.

Permits to construct are issued for those facilities required by federal law and others that "has 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 following construction. These facilities will be classified and listed in the department's regulations.

operate would be issued approximately 60-90 days, later after the draft permit undergoes the required federal review.

AS 46.14.210 EMISSION CONTROL PERMIT REGULATIONS

OBJECTIVE:

This section directs the department to adopt regulations which include all elements of the permit program expressly required by the Clean Air

FEDERAL REQUIREMENTS:

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

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

Act. Sub-section (b) incorporates the authority from the existing AS 46.03.160(g) (proposed for repeal).

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.

can contain their emissions below the applicable levels through voluntary process or operational restrictions.

AS 46.14.215 STATE 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

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

the plans. All actions taken by the department must conform with the plan.

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. Subsection (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 air permits for selected facility categories.

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

AS 46.14.245 OBJECTION BY THE ADMINISTRATOR

OBJECTIVE:

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

FEDERAL REQUIREMENTS:

CAA Section 505(b)

STATE INTENT & EXPLANATION:

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

AS 46.14.250 PAYMENT OF FEES AND FEE STRUCTURE

OBJECTIVE:

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

FEDERAL REQUIREMENTS:

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

STATE INTENT & EXPLANATION:

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

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

AS 46.14.255 PENALTY AND INTEREST FOR NONPAYMENT

OBJECTIVE:

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

FEDERAL REQUIREMENTS:

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

STATE INTENT & EXPLANATION:

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

AS 46.14.260 CLEAN AIR PROTECTION FUND; SPECIAL ACCOUNT

OBJECTIVE:

This section establishes a special account 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.

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.

Sec. 46.14.265 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)

STATE INTENT & EXPLANATION:

Currently air permits are issued for up to 5 years. It is expected that the same policies would be retained

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

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 46.14.270 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 46.14.275 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. 46.14.280 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 46.14.285 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 46.14.290 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 46.14.292 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 46.14.295 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

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.

be retained to protect public health and the environment during unanticipated catastrophic events.

AS 46.14.292 TIMELY AND COMPLETE APPLICATION AS A SHIELD

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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.

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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 46.14.295 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

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.

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 and to report its findings to the EPA Administrator.

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 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 PUBLIC RECORDS

OBJECTIVE:

This section provides that documents in the department's possession are public records with very few exceptions (see - AS 46.14.510). 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 46.14.510 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 (proposed for repeal) with some clarifications.

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 existing state law, except for the items specifically noted here. Language is proposed to address situations

AS 46.14.500 PUBLIC RECORDS

OBJECTIVE:

This section provides that documents in the department's possession are public records with very few exceptions (see - AS 46.14.510).

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 46.14.510 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 (proposed for repeal) with some clarifications.

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 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.

Sec. 46.14.520 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 46.14.530 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 46.14.540 STATE AND FEDERAL AID

OBJECTIVE:

The proposed language reflects to a large degree the existing language

FEDERAL REQUIREMENTS:

CAA Section 105 authorizes federal grants for air pollution control

STATE INTENT & EXPLANATION:

The proposed statute includes only minor changes to the existing

of AS 46.03.230 (proposed for repeal)

efforts implemented by state and local governments.

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 46.14.550 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 46.14.560 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 46.14.900 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 13

OBJECTIVE:

Amend: AS 28.10.041(a)(10)
AS 28.10.423
AS 29.35
AS 29.35.200(b)
AS 29.35.210(a)
AS 29.35.210(b)
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.

FEDERAL REQUIREMENTS:

N/A

STATE INTENT & EXPLANATION:

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

SECTION 14 AMENDING 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 15 AMENDING AS 46.790 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 16 THROUGH 18

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 AND 21 AMEND 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 22 AMENDS AS 46.35.200(4)

OBJECTIVE:

Amend AS 46.35.200(4) to incorporate air permits issued 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 23

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 24

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 25 AND 26

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.

Motor Vehicle Manufacturers Association
of the United States, Inc.

Thomas H. Hanna
President and Chief Executive Officer

May 7, 1992

Representative Tom Moyer
Alaska State Legislature
Room 13-C, State Capitol
Juneau, Alaska 99801-1182

Re: CS House Bill 377

Dear Representative Moyer:

In talking with the Department of Environmental Conservation, it is our understanding that your HB 377 will be the lead bill in the State Legislature to work toward the implementation of Alaska's clean air legislation.

The Motor Vehicle Manufacturers Association, particularly during this past several years, has been working with all the state legislatures with respect to their clean air programs. We want to be supportive of a program in which Alaska will be able to meet the federal Clean Air Act standards.

Relative to Article 3: Motor Vehicle Pollution Control Program, Section 46.14.300 already basically exists in current Alaska law as Section 46.03.190 of the Alaska Environmental Conservation Law. This section gives the Department of Environmental Conservation authority to implement almost whatever motor vehicle pollution control program they wish in order to meet Alaska's clean air standards, which could include California emissions standards. Although the language does not expressly authorize this authority to the Department, such a claim could be challenged.

We strongly recommend that section 46.14.300 be amended to include language which would require the Department to conduct a study if California emissions standards were to be adopted, and reported back to the Legislature prior to the implementation of such a program. It is also our recommendation that the Legislature continue to play a role of having legislative oversight on the implementation of any other motor vehicle pollution control program and fees for Alaska.

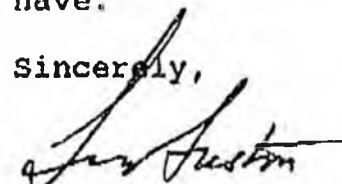
Representative Tom Moyer

Page 2

At the conclusion of the legislative session we would be more than happy to personally meet and work with the Department to discuss some of the specific programs they may have in mind.

Thank you very much for your consideration of such language in this section of the proposed bill and we would be happy to respond to any questions regarding this you may have.

Sincerely,



James W. Austin
Public Affairs Manager
Pacific Coast Region

JWA/eb

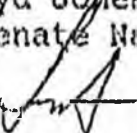
cc: Senator Lloyd Jones, Chairman,
Senate Natural Resources Committee
Members, Senate Natural Resources Committee
Alaska Department of Environmental Conservation

MEMORANDUM

MOTOR VEHICLE MANUFACTURERS ASSOCIATION
1107 Ninth Street, Suite 1030
Sacramento, California 95814
916-444-3767

3 pages

TO: Senator Lloyd Jones
Chairman, Senate Natural Resources Committee

FROM: Jim Austin 

DATE: May 7, 1992

SUBJECT: Alaska CSHB 377

Please find attached a letter to Representative Moyer outlining our concerns and recommendations relative to his proposed CSHB 377.

As I pointed out in my letter, our concerns lie in the total freedom that the Department of Environmental Conservation has in implementing programs with no legislative oversight being required.

I also want to express my appreciation to you and compliment your staff on their cooperation and assistance in keeping us apprised on activities on this issue.

As I indicated to Representative Moyer, since the bill is so general relative to the motor vehicle portion of the proposal, we would be more than happy to come up and meet with the Department of Environmental Conservation, your staff, and any others, after the session to discuss specific programs relative to how Alaska can in fact comply with the new federal clean air standards.

If you have any questions, I will be happy to try to respond.

Motor Vehicle Manufacturers Association
of the United States, Inc.

Thomas H. Hanna
President and Chief Executive Officer

May 7, 1992

Representative Tom Moyer
Alaska State Legislature
Room 13-C, State Capitol
Juneau, Alaska 99801-1182

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We strongly recommend that section 46.14.300 be amended to include language which would require the Department to conduct a study if California emissions standards were to be adopted, and reported back to the Legislature prior to the implementation of such a program. It is also our recommendation that the Legislature continue to play a role of having legislative oversight on the implementation of any other motor vehicle pollution control program and fees for Alaska.

MEMORANDUM

MOTOR VEHICLE MANUFACTURERS ASSOCIATION
1107 Ninth Street, Suite 1030
Sacramento, California 95814
916-444-3767

3 pages

TO: Terry Otness, Consultant,
Senate Natural Resources Committee

FROM: Jim Austin *J.A.*

DATE: May 7, 1992

SUBJECT: Alaska CSHB 377

Attached is a copy of a letter I sent to Representative Moyer today, along with your chairman and the members of your committee. I just was advised this morning that HB 377 went out of House Finance Committee today and will probably go to the Floor and then over to your committee. I also have sent a copy of the letter to the Department of Environmental Conservation.

My apologies for getting these comments to you so late. As you can see, our primary concern deals with the ability of DEC, under existing law to move ahead with a program such as the California emissions program requirements for the State of Alaska. Obviously this would give us great concern and not necessarily meet the clean air needs for the State.

Also, as I pointed out in my letter to Representative Moyer, we feel it is very important that if the DEC were to implement a California emissions program, that there be a study done prior to its implementation and then come back to the Legislature for its approval. Absent the legislative oversight on this program as well as any other, they have really been given a blank check to do whatever they feel appropriate, with no controls.

Could you please make a copy of Representative Moyer's letter to your committee members.

Thank you again for all your time and I will be glad to try to respond to any questions in the short time we have left.

JWA/eb

Enclosure

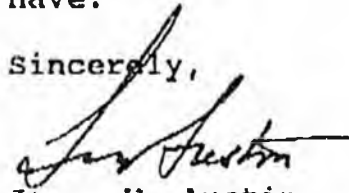
Representative Tom Moyer

Page 2

At the conclusion of the legislative session we would be more than happy to personally meet and work with the Department to discuss some of the specific programs they may have in mind.

Thank you very much for your consideration of such language in this section of the proposed bill and we would be happy to respond to any questions regarding this you may have.

Sincerely,



James W. Austin
Public Affairs Manager
Pacific Coast Region

JWA/eb

cc: Senator Lloyd Jones, Chairman,
Senate Natural Resources Committee
Members, Senate Natural Resources Committee
Alaska Department of Environmental Conservation



Council of Alaska Producers

P.O. Box 22653 Juneau, Alaska 99802

Telephone: (907) 463-5704
Telecopy: (907) 463-5740

Council of Alaska Producers
David G. Stone, President

Council Members: AMAX

Greens Creek Mining Co.

Echo Bay Alaska Inc.

Kensington Venture

Fairbanks Gold Inc.

Cominco Alaska Inc.

Cominco Exploration

Alaska Gold Co.

North Pacific Mining Co.

Cambior Alaska

American Copper & Nickel Co.

Sec. 46.14.010. EMISSION CONTROL REGULATIONS. (a) After public hearing, the department shall adopt regulations under this chapter setting such air pollution emission standards, performance standards and limitations as are necessary to meet the requirements of state air quality control programs mandated by the Clean Air Act as amended, 42 U.S.C. 7401-7671q, and federal regulations promulgated thereunder. The department may not regulate air contaminants that are not federally regulated, nor categories of sources or facilities that are not federally regulated, nor establish an emission standard or limitation that is more stringent than a corresponding federal emission standard or limitation, except as provided in subsections (b) through (d) of this section.

(b) The department may adopt an equivalent emission limitation when required pursuant to 42 U.S.C. 7412(j).

(c) The department may apply such federal standards as are controlling in order to determine emission limitations required in each permit.

(d) The department may conduct scientific studies of air contaminants by qualified persons. All such studies shall be subject to peer review. Following peer review, if the department determines on the basis of these studies that unique meteorological conditions, source characteristics and exposure profiles are significantly different in Alaska from those upon which the federal standards and limitations are based and reasonably require the regulation of air contaminants otherwise unregulated or require more stringent emissions limitations in order to protect human health and welfare, the department shall report its findings and

recommendations to the legislature at its next regular session.
The report shall include suggested legislation, detailed findings describing and evaluating the studies that form the basis for the department's recommendation, the results of peer review evaluations, and an analysis of the technological and economic feasibility of the proposal.

(e) State emission standards in effect on April 1, 1992 regulating ammonia, hydrogen sulfide and wood smoke may remain in effect.

(f) The department promptly shall provide exemptions for fugitive emissions to the extent allowed under federal laws and regulations, and promptly shall adopt other federally adopted exemptions.

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

(h) Emission limitations stated in permits shall be in the form of performance standards and shall not restrict the permittee to the use of particular designs or equipment.

(i) The department may require the owner and operator to use or adopt methods, processes or procedures for the management and operation of a facility regulated under this chapter if the federal administrator has promulgated, pursuant to 42 U.S.C. 7112(h), a design, equipment, work practice or operational standard, or

combination thereof, for the control of a hazardous air pollutant or pollutants that the federal administrator determines will assure the proper operation and maintenance of any such element of design or equipment, unless the federal administrator approves an alternative hazardous air pollution standard under 42 U.S.C. 7112(h)(3).

(j) The department shall include in a permit an emission standard or limitation that is more stringent than the applicable federal standard or limitation if requested by an owner and operator.

(k) For a facility containing more than one source subject to regulation under this chapter, the department shall allow numerical averaging of the emissions of each air contaminant from the several sources at that facility for purposes of determining compliance with applicable regulations and with permit limitations.

D R A F T: April 22, 1992

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

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

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

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

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

(5) an existing facility, otherwise described in (1), (2), (3), or (4) of this subsection, for which

(A) a modification is proposed that would increase actual emissions of an air contaminant by an amount equal to or greater than the emission quantity set out in regulations adopted under AS 46.14.010; or

(B) reconstruction is proposed that makes it

technologically and economically feasible to meet the applicable standards of this chapter.

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

(1) a facility that emits or has the potential to emit greater than 100 tons per year (TPY) of a regulated air contaminant;

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

(3)[1] a source subject to federal new source performance standards under 42 U.S.C. 7411 (Clean Air Act, sec. 111) or national emission standards for hazardous air pollutants issued under 42 U.S.C. 7412 (Clean Air Act, sec. 112); or

(4)[2] another stationary source designated by the federal administrator or the department, by regulation only as provided in 46.14.010.

COMMENT: The amendments delete the use of "major facility" to eliminate the ambiguity that that phrase causes, and makes it possible for a person reading the statute to be certain as to which facilities are covered for construction permits and which

facilities are covered for operating permits. The definition of
"major facility" must be deleted from Sec. 990.

AS 46.14.222. ...COMPLETENESS - DETERMINATION. (a) The

department shall review every application submitted under this chapter for completeness. To be determined complete, an application must provide the information identified by the department in regulations adopted under AS 46.14.210 and in standard application forms provided by the department under 42 U.S.C. 7661a(b)(1), and must be certified true and correct by the owner and operator.

(b) The department shall notify the applicant in writing whether the application is complete. Unless the department notifies the applicant within 30 days of receipt of an application that the application is incomplete, the application shall be deemed to be complete.

(c) If, during the processing of an application after it has been determined or deemed to be complete, the department finds that additional information is necessary to evaluate or take action on that application, such information may be requested in writing from the owner and operator. Such a request shall not reverse a prior determination of completeness.

Sec. 46.14.225..... ADMINISTRATIVE ACTIONS REGARDING PERMITS.

(a) Except as provided in AS 46.14.245 and 46.14.255(b), after receipt of a complete application, and after notice and opportunity for public comment and hearing, the department shall issue or deny

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

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

(b) Notwithstanding (a) of this section, the department may establish a phased schedule for acting on operating permit applications submitted on or before November 15, 1994. A phased schedule must ensure that at least one-third of the applications submitted on or before November 15, 1994, will be acted on by the department during each of the three years after November 15, 1994. On or before November 15, 1997, the department shall act on all applications received on or before November 15, 1994. The department shall give priority to the issuance of permits for new facilities and modifications of existing facilities.

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

COMMENT: The amendment gives authority to the department to process permit applications for new and modified facilities if

- the processing of applications for unchanged existing facilities
- creates a bottleneck. It also removes an ambiguity in the
corresponding section of the "clean" bill relating to issuance of
construction permits and the notice and comment period.

Sec. 46.14.230. ~~REVIEW OF PERMIT ACTION.~~ If aggrieved by a permit action under this chapter, the owner and operator, a person who participated in the public comment process, or a person with standing [UNDER STATE OR FEDERAL LAW TO OBTAIN ADMINISTRATIVE OR JUDICIAL REVIEW OF A PERMIT ACTION UNDER THIS CHAPTER] may request an adjudicatory hearing under the department's adjudicatory hearing procedures. After the issuance of an adjudicatory hearing decision, a party to the hearing may obtain judicial review of that decision as provided in Alaska Rules of Appellate Procedure.

Amend 46.14.990 to include

() "person with standing" means a person who has or possesses a private, substantive, legally protected interest under state law that may be adversely affected;

COMMENT: By deleting the language in caps in Sec. 230 and providing a specific definition of "standing", disputes over standing should be diminished at both administrative and judicial review. Hearing officers are generally not permitted to create law. Therefore, in order to simplify administrative proceedings as well as to eliminate issues on judicial review, a definition of standing should be included.

The definition of "person with standing" will preserve the rights of those who, for one reason or another, did not participate in the public comment process, but have private interests to protect.

Sec. 46.14.232. MONITORING. Monitoring of stack emissions or ambient air quality shall be required only for purposes of demonstrating compliance with applicable permit requirements. Monitoring requirements shall be reasonable and based upon test methods, analytical procedures and statistical conventions approved by the federal administrator or otherwise generally accepted as scientifically competent. Monitoring activities shall be consistent with the applicable emissions limitations standards and other requirements contained in the permit, unless otherwise agreed to by the owner and operator and the department. The department may not require owners and operators of sources to monitor emissions or ambient air quality solely for the purpose of scientific investigation or research unless mutually agreed to by both parties.

Section 46.14.260. DURATION OF OPERATING PERMITS. (a) An initial operating permit under this chapter for a new facility shall be issued for a fixed term established by the Department that is no longer than five years but no shorter than three years after the date of issue except as provided for temporary permits under 46.14.280 or unless a shorter term is requested by the permit applicant.

(b) An operating permit for an existing or modified facility and a renewal operating permit shall be issued for a fixed term of five years, except as provided for temporary permits under 46.14.280 or unless a shorter term is requested by the permit applicant.

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

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

(b) A permit issued under this chapter is subject to [REVIEW AND] reopening by the department if the permit is issued to a major facility and has a remaining duration [IS VALID FOR A TERM] of three or more years. The department shall reopen a permit described in this subsection to incorporate changes in law, or to impose equivalent emission limitations, that become [BECAME] applicable after the permit is [WAS] issued. The department shall make revisions [INCORPORATIONS] allowed under this subsection as soon as practicable, but, regarding a change in law, no later than 18 months after the change in law takes [TOOK] effect. The department may not reopen a permit under this subsection if the change in law is not effective until after the date that the permit expires. Reopening of a permit under this subsection shall be treated as a permit renewal by the department if the procedural requirements for permit renewal have been met.

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

(d) The department shall provide written notice of intent to reopen and revise a permit issued under this chapter to the owner and operator of a facility not less than 30 days before the date

the permit is to be reopened, except that the department may provide a shorter period in the event of an emergency.

COMMENT: The Clean Air Act speaks of "reopening and revision", not "review." "Review" has been deleted because use of that word creates some ambiguity, suggesting that a permit must be reopened to afford the department the opportunity to "review" the permit.

The grammar has been changed to make clear that the department's authority to reopen permits is continuing. The word "incorporations" has been changed to "revisions" to reflect the purpose and procedures more precisely.

Subsection (d) has been added to make sure that the owner and operator of a facility receive at least the minimum notice required by the Clean Air Act.

Amend 46.14.270 to read as follows: ~

Sec. 46.14.270. ~~MODIFICATION, TERMINATION, OR REVOCATION AND REISSUANCE OF PERMITS.~~ (a) The department may modify a permit issued under this chapter if the owner and operator of the facility request modification or if the department determines that

(1) the permit contains a material mistake; or

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

(b) The department may modify or terminate a permit issued under this chapter if the department finds that the permit was obtained by misrepresentation of a material fact, or the owner and operator failed to disclose fully the facts supporting issuance of the permit;

(c) The department may revoke and reissue a permit issued under this chapter if the department finds that the permit must be revoked and reissued to assure compliance with applicable requirements.

(d) The department shall give written notice of intent to the owner and operator not less than 30 days before commencement of proceedings to modify, terminate, or revoke and reissue a permit. The notice shall include the finding required under (b) or (c) of this section.

(e) Proceedings under this section shall be conducted in accordance with regulations adopted by the department governing issuance, renewal, and reopening of permits.

Sec. 46.14.285. PERMIT AS SHIELD. (a) Compliance with an operating permit, order or other determination issued under this chapter is considered to be compliance with [THE OPERATING PERMIT PROGRAM ESTABLISHED UNDER] this chapter.

(b) Nothing in this section alters or affects

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

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

SEC. 46.14.297. INSPECTION. An officer or employee of the department designated by the commissioner may, upon presentation of credentials and at reasonable times, enter upon or through any premises of a facility regulated under this chapter to (1) inspect and copy any records required to be maintained; (2) inspect any monitoring equipment or method required to be used; or (3) sample any emissions that the owner and operator of the facility is required to sample.

1 concentrations of population;
2 (2) local air contaminant sources; or
3 (3) relevant geographic, topographic, or
4 meteorological factors.

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

10 (1) the respective duties and authority of the
11 department and the municipality or local air quality
12 district in the administration of the local air quality
13 control program;

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

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

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

22 (e) A local air quality control program shall provide for the
23 exemptions of a locally registered motor vehicle from motor vehicle
24 emission requirements adopted under AS 46.14.300 if the motor
25 vehicle is not used within the program's jurisdiction.

26 (f) A municipality or a local air quality district

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

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

13

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

(a) Except as provided in (d) of this section, a person is guilty of a class A misdemeanor if the person intentionally [WITH CRIMINAL NEGLIGENCE]

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

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

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

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

(5) renders inaccurate a monitoring device or method required to be maintained under AS 46.14, a regulation adopted under AS 46.14, or a permit issued by the department or a

local air quality control program under AS 46.14.

*Sec. 18... AS 46.03.790 is amended by amending subsection (g)(2) and by adding a new subsection (h), as follows:

(g)(2) "Intentionally" has the same meaning given in AS 11.81.900. [CRIMINAL NEGLIGENCE HAS THE SAME MEANING GIVEN IN AS 11.81.900]

*Sec. 22. REPORT AND RECOMMENDATIONS ON PERMIT FEE PROGRAM.

(a) By January 31, 1993, the department shall provide to the legislature

(1) recommended legislation, together with the federal administrator's comments as to its legal adequacy, to establish a permit fee program designed to

(A) allocate equitably and fairly direct and indirect costs among owners and operators of facilities required to have permits; provide that no source or source classification bears an unreasonable or disproportionate share of the cost of the permit program or the small business assistance program;

(B) meet the requirements of Title V of the Clean Air Act, 42 U.S.C. 7401-7671q; and

(C) assure maximum efficiency and minimize total cost of all program elements, including excessive staffing for permit applications and meetings, to be supported from permit fees;

(2) a report to the legislature containing the proposed permit fee schedule, including

(A) a detailed discussion of the facts and rationale for the proposal;

(B) a detailed comparison of cost and staffing data using the number of permits issued or otherwise processed annually under the air permit program set forth as AS 46.03.140-245 and other similar regulatory programs administered by the department,

(C). comparisons based upon data from at least five other states with air permit programs similar to the program administered by the department.

(b) The department shall by October 15, 1992, publish for public review and comment drafts of the materials produced in response to subsection (a), and shall provide to the legislature by January 31, 1993, a summary of the public comments received, any alternative fee schedules suggested by the public and the department's analysis of and response to the public comments.

COMMENT ON SECS. 267 AND REVISED 270. EPA recommends that states adopt a notice amendment procedure and a fast-track procedure for minor modifications. The notice amendment procedure would be used when no public comment is required and under the language of proposed Sec. 267, would relate to changes at a facility that would not affect air emissions.

Modifications are subject to public notice and comment proceedings under EPA guidelines. Without either final EPA regulations or state regulations, it is difficult to describe those modifications that might be suitable for a fast-track procedure. Therefore, under the revision to Sec. 270, all modifications would be treated the same.

The changes proposed are as follows:

1. Subsection (a) provides for modification at the request of the owner and operator or if a material mistake has been made or a material change in the quantity or type of air contaminant emitted by the facility.

2. Subsection (b) gives the department flexibility to modify or terminate a permit. If the owner and operator unwittingly misrepresented a material fact or failed to disclose facts, the department may determine that it is in the best interests of the public not to terminate the permit, but simply modify it.

3. Subsection (c) makes it clear when revocation and reissuance could occur.

4. Subsection (d) makes explicit the minimum standards for notice to the owner and operator as provided in the EPA

guidelines. EPA requires that the findings in (b) or (c) be furnished with the notice.

5. Subsection (e) presumes that the department will establish by regulation common procedures for all permit actions that require public notice and comment and that proceedings for modification, termination, and revocation and reissuance will be covered by such procedures.

Sec. 270 in the DEC draft makes it difficult for a person having to deal with that provision to understand when a particular action will be used. Regulations dealing with the various actions will be easier to write and fewer challenges to the appropriateness of the department's actions are anticipated.

Explanation of Section 14:

The Producer's Council initially proposed a separate civil penalty provision applicable only to air quality violations. In response to the Department's concern about this approach, we have agreed to use the existing civil penalty provisions in 46.03 as our starting point. This proposal, which is similar to our original suggestion, amends 46.03.760(f) by adding certain penalty assessment criteria contained in the Clean Air Act (Section 113(e)) and by incorporating a requirement for the department to adopt a penalty policy by regulation. These changes will help assure fairness and predictability in the use and application of civil penalties.

Explanation of change to proposed 46.14.030:

Since the first sentence of this section is a general policy statement we thought it should be relocated to the "Purposes" clause in Section 1 (see page 1 of our draft, lines 11-14). The last sentence, referring to the Department's authority to adopt regulations, was deleted because it is redundant (see 46.14.010, 46.14.210; and Section 26).

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION
OFFICE OF THE COMMISSIONER
410 WILLOUGHBY AVENUE, JUNEAU, AK 99801-1795

PHONE: (907) 465-5050
FAX: (907) 465-5070

April 22, 1992

Council of Alaska Producers
Robertson, Monagle & Eastaugh
240 Main, Suite 800
Juneau, AK 99801

Attn: James Clarke

Dear Mr. Clarke:

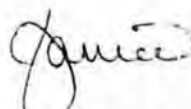
Enclosed is a packet of draft amendments concerning HB 377, the Air Bill. These draft amendments will be the subject of discussion at a work session to be held this Friday, April 24, in the Capitol Building, Room 17, starting at 10:30 a.m.

The draft amendments were generated in response to several suggestions put forward by the Council of Alaska Producers and other industry groups during the past few weeks. The contents of this packet do not represent all the potential amendments that may be put forward in response to numerous recent discussions, but simply those which could be accomplished in the limited time prior to Friday's meeting.

Our intent is to focus on the major issues concerning the Air Bill on Friday in an attempt to resolve those issues with compromise language that will satisfy the Department as well as the affected industries.

It is our hope that, where agreement is reached, Representative Mcyer, as sponsor of HB 377, will suggest appropriate amendments to the bill. We look forward to continued cooperation and a productive meeting on Friday.

Sincerely,



Janice Adair
Assistant Commissioner

Enclosure

cc: The Honorable Lloyd Jones (w/enclosure)
The Honorable Tom Moyer (w/enclosure)

AMENDMENT PACKET #1 ADEC/ADOL 4/21/92

1 OF 2 PROPOSALS FOR Sec. 010

PROPOSED AMENDMENT TO CS HB377 (JUD)

Sec. 46.14.010. AMBIENT AND EMISSION CONTROL REGULATIONS. (a)

After public hearing, the department may adopt regulations under this chapter as necessary to prevent, abate, control, or identify air pollution [DUE TO EMISSIONS, INCLUDING REGULATIONS SETTING EMISSION STANDARDS, PERFORMANCE STANDARDS, AND LIMITATIONS]. The standards and limitations adopted under this section [MAY BE BASED ON HUMAN HEALTH AND WELFARE OR ON AVAILABLE TECHNOLOGY AND] may be for the state as a whole or may vary from area to area in recognition of local conditions. The Department shall [MAY] provide exemptions for fugitive emissions to the extent allowed under federal law and regulations.

(b) Ambient air quality standards adopted by the department in regulation shall be based upon protecting human health and welfare. The numeric value of an ambient standard shall be identical to the value established in federal law, if any, by the federal Environmental Protection Agency, for the particular air contaminant.

(c) Emission standards, performance standards and emission limitations which are adopted by the department in regulation or specified in a permit to

restrict the release of air contaminants to the atmosphere shall be based on protecting human health and welfare or on reasonably available technology.

(1) The department shall adopt, in regulation, emission standards, performance standards and emission limitations applicable to individual sources within a facility, or to facility-wide activities. Facility-wide standards or limitations shall be based on emissions rates from multiple sources at the facility.

(2) Emission standards, performance standards and emission limitations adopted in regulations shall not be more restrictive than the most restrictive applicable federal emission standard, performance standard or limitation unless the department demonstrates that a more restrictive standard is reasonably achievable after taking into account available technology, economic impacts, engineering feasibility and reliability, and environmental impacts.

(3) Emission standards, performance standards and emission limitations specified in a permit, shall not be more restrictive than any applicable standard established in regulation or the most restrictive applicable federal emission standard, performance standard or limitation unless:

(i) A more restrictive standard is requested by the owner and operator of the facility:

(ii) A more restrictive standard is necessitated by a source specific or facility specific determination required under 42 U.S.C. 7401 - 7671a (Clean Air Act) and federal regulations adopted under those laws: or

(iii) A more restrictive standard is necessary to remedy a violation of an ambient air quality standard.

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

PROPOSED AMENDMENT TO DRAFT CS PREPARED BY PRODUCER'S COUNCIL

Sec. 46.14.010. AMBIENT AND EMISSION CONTROL REGULATIONS.

(a) After public hearing, the department may adopt regulations under this chapter setting ambient air quality standards and [SUCH AIR POLLUTION] emission standards, performance standards and limitations as are necessary to protect human health and welfare, meet the requirements of state air quality control programs mandated by the Clean Air Act as amended, 42 U.S.C. 7401-7671q, and federal regulations promulgated thereunder. The department may not regulate chemical air constituents that are not federally regulated until the Administrative Regulation Review Committee of the Alaska Legislature has been notified and had adequate time to review the proposed regulation. The department may not regulate [, NOR] categories of sources or facilities that are not federally regulated [,] unless the associated emissions are likely to result in a violation of an ambient air quality standard.

(b) Ambient air quality standards adopted in regulation shall be identical in numeric value to that value established in federal law, if any, by the Environmental Protection Agency, for that particular air contaminant. Regulations in effect on April 1, 1992 pertaining to ammonia, hydrogen sulfide and particulate matter from wood smoke may remain in effect.

(c) the department shall not establish an emission standard,

performance standard or limitation that is more stringent than the most restrictive [A] corresponding federal emission standard or limitation, if any, except as provided in the following: [SUBSECTIONS (b) THROUGH (d) OF THIS SECTION.]

(1) [(b)] the department may adopt an equivalent emission limitation when required under [PURSUANT TO] 42 U.S.C. 7412(j) (Clean Air Act); [.]

(2) [(c)] the department may apply such federal standards as are controlling in order to determine emission limitations required in each permit; [.]

(3) the department may establish, in a permit, emission standards resulting from a source specific or facility specific determination required under 42 U.S.C. 7401 - 7671g (Clean Air Act);

(4) the department may establish, in a permit, more restrictive emission standards upon request by the owner and operator of a facility;

(5) the department may establish, in a permit, more restrictive emission standards to remedy a violation of an ambient air quality standard; and

(6) following notice and opportunity for review by the Administrative Regulation Review Committee of the Alaska Legislature, the department may establish a more restrictive emission standard, in regulation, based upon a demonstration that a more restrictive standard is reasonably achievable after taking into account available technology, economic impacts, engineering feasibility and reliability, and environmental impacts.

[(d) STATE REGULATIONS IN EFFECT ON APRIL 1, 1992 REGULATING AMMONIA, HYDROGEN SULFIDE AND WOOD SMOKE MAY REMAIN IN EFFECT.]

(d) [(e)] The department shall provide exemptions for fugitive emissions to the extent allowed under federal laws and regulations, and ~~may~~ [SHALL] adopt other federally adopted exemptions.

(e) The department may adopt emission standards, performance standards or emission limitations based upon facility-wide activities in recognition of the numeric emission rates from multiple sources within the facility.

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

(g) Emission limitations stated in permits shall be in the form of performance standards and ~~shall not restrict the permittee to the use of particular designs or equipment.~~

(h) The department may not require the owner and operator to use or adopt methods, processes or procedures for the management and operation of a facility regulated under this chapter unless:

(1) the method, process or procedure is used directly or

indirectly to measure or report emission rates, quantities or concentrations, from the facility;

(2) the method, process or procedure is used to measure ambient concentrations of air contaminants or meteorological parameters;

(3) the method, process or procedure is required under 42 U.S.C. 74--(Clean Air Act Section 112(h));

(4) the method, process or procedure is part of a compliance plan or a start-up/shutdown/malfunction plan; and

(5) I'M NOT CERTAIN THAT I HAVE IDENTIFIED EVERYTHING THAT MAY BE NEEDED IN THIS CATEGORY.

AMENDMENT PACKET #2 ADEC/ADOL 4/21/92
1 OF 1 PROPOSAL

PROPOSED AMENDMENT TO DRAFT CS PREPARED BY PRODUCER'S COUNCIL

Sec. 46.14.030. STATE AIR QUALITY PLAN.

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

PROPOSED AMENDMENT TO CS HB377 (JUD)

Sec. 46.14.200. PERMITS FOR CONSTRUCTION, MODIFICATION, OR OPERATION. (a) A person [MAY NOT] who intends to construct, install, modify, reconstruct, or establish a facility subject to AS 46.14.205(a)[, EXCEPT IN COMPLIANCE WITH THE] must obtain a construction permit. [AND AN ORDER OR OTHER DETERMINATION OF THE DEPARTMENT UNDER THIS CHAPTER.]

(b) A person [MAY NOT OPERATE A MAJOR FACILITY OR] who operates or intends to operate a facility [THAT CONTAINS ONE OR MORE OF THE SOURCES LISTED IN] subject to AS 46.14.205(b) must obtain an operating permit or [EXCEPT IN COMPLIANCE WITH THE OPERATING PERMIT AND] an order or other determination of the department under this chapter.

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

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

(e) If the federal administrator exempts a source from the requirements of 42 U.S.C. 7661a(a) (Clean Air Act, sec. 502(a)),

the commissioner, by regulation, shall [MAY] exempt that source from equivalent [SOME OR ALL OF THE] requirements of this chapter.

PROPOSED AMENDMENT TO CS HB377 (JUD)

Sec. 46.14.205. FACILITIES REQUIRING PERMITS. (a)

Before constructing, installing, modifying, reconstructing, or establishing a facility, the owner and operator shall obtain a construction permit from the department if the facility is any one of the following:

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

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

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

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

(5) an existing facility, otherwise described in (1), (2), (3) or (4) of this subsection, for which

(A) a modification is proposed that would increase actual emissions of an air contaminant by an amount equal to or greater than the emission quantity set out in regulations adopted under AS 46.14.010; or

(B) reconstruction is proposed that makes it technologically and economically feasible to meet the applicable standards of this chapter.

(b) The owner and operator of a facility shall obtain an operating permit from the department if the facility is [A MAJOR FACILITY,] a facility subject to (a) of this section [,] or is a facility that [CONTAINS ONE OR MORE OF THE FOLLOWING SOURCES]:

(1) emits or has the potential to emit greater than 100 tons per year (TPY) of a regulated air contaminant;

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

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

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

PROPOSED AMENDMENT TO CS HB377(JUD)

Sec. 46.14.210. EMISSION CONTROL PERMIT PROGRAM REGULATIONS.

(a) The department shall adopt regulations to address all procedural and substantive elements of the emission control permit program, except procedural elements that relate only to the internal management of the department and do not affect the public or govern the way the department deals with the public. The regulations shall be reasonable, adequate, and provide maximum flexibility in the operation of a facility consistent with the 42 U.S.C. 7401 - 7671g (Clean Air Act) and applicable federal regulations. The regulations must include the following:

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

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

(3) procedures for

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

(B) processing and reviewing an application;

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

(D) issuing permits;

(4) reasonable standard permit conditions, including conditions for

(A) emission standards and limitations;

(B) monitoring, recordkeeping, and reporting for facilities subject to AS 46.14.205;

(C) inspection and entry;

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

(E) annual certification of compliance; and

(F) excess emission or process deviation reporting;

(5) fees, and procedures for collecting fees;

(6) procedures for renewing, modifying, or amending a permit that provide maximum flexibility in the operation of the facility, including procedures to allow changes to a permitted facility without requiring a permit revision whenever provided in federal regulations, consistent with the purposes of this chapter and with 42 U.S.C. 7401 - 7671g (Clean Air Act); and

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

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

AMENDMENT PACKET #6 ADEC/ADOL 4/21/92

1 PROPOSAL W/ 3 OTHER EFFECTED SECTIONS

PROPOSED AMENDMENT TO CS HB377(JUD)

Sec. 46.14.220. TIME FOR SUBMISSION OF PERMIT APPLICATIONS.

(a) The owner and operator of a facility required to have an operating permit under this chapter shall submit the required application and monitoring, reporting, and quality assurance plan no later than

(1) 12 months after the date on which the facility becomes subject to AS 46.14.200(b) [, OR AT AN EARLIER TIME IF REQUIRED BY THE DEPARTMENT.] ;or

(2) 12 months after the Approval Date, whichever is later.

The Approval Date is the date on which the federal administrator approves the state permit program under 42 U.S.C. 7661a(d).

(b) The department may accept and begin processing applications filed earlier than the Approval Date. Applications filed early may be given priority for permit issuance.

PROPOSED AMENDMENTS TO CS HB377(JUD)

Sec. 46.14.225. ADMINISTRATIVE ACTIONS REGARDING PERMITS. (a) Except as provided in AS 46.14.245 and AS 46.14.255(b), after receipt of a complete application, and after notice and opportunity for public comment and hearing, the department shall issue or deny

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

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

(b) Notwithstanding (a) of this section, the department may establish a phased schedule for acting on operating permit applications submitted within the time required under AS 46.14.220 [ON OR BEFORE NOVEMBER 15, 1994]. A phased schedule must ensure that at least one-third of the applications submitted during the initial application period [ON OR BEFORE NOVEMBER 15, 1994,] will be acted on by the department during each of the three years following the initial application period [AFTER NOVEMBER 15, 1994. ON OR BEFORE NOVEMBER 15, 1997, THE DEPARTMENT SHALL ACT ON ALL APPLICATIONS RECEIVED ON OR BEFORE NOVEMBER 15, 1994].

(c) Failure by the department to act within the time limits established in or under (a) or (b) of this section shall be treated as a final agency action, but only for

purposes of judicial review to require that action be taken by
the department.

AMENDMENT PACKET #6 ADEC/ADOL 4/21/92
SUPPORT AMENDMENT #2 FOR Sec.220

PROPOSED AMENDMENT TO CS HB377(JUD)

* Sec. 26. AS 46.14.200(b), 46.14.205(a)(5) and (b), 46.14.220, 46.14.240, 46.14.245, 46.14.265, 46.14.270, 46.14.280, 46.14.290, and 46.14.292, created by sec. 4 [2] of this Act, take effect on the day the federal administrator approves the state permit program under 42 U.S.C. 7661a(d) [NOVEMBER 15, 1993].

AMENDMENT PACKET #6 ADEC/ADOL 4/21/92
SUPPORT AMENDMENT #3 FOR Sec.220

PROPOSED AMENDMENT TO CS HB377(JUD)

* Sec. 25. AS 46.14.010, 46.14.020, 46.14.200(a), (c), and (d), 46.14.205(a)(1) - (4), 46.14.210, 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, 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, 46.14.530, 46.14.540, 46.14.550, 46.14.560, and 46.14.900, created by sec. 4 [2] of this Act, and secs. 1 and 3 - 24 of this Act take effect immediately under AS 01.10.070(c).

PROPOSED AMENDMENT TO DRAFT CS PREPARED BY PRODUCER'S COUNCIL

AS 46.14.222. COMPLETENESS DETERMINATION. (a) The department shall review every application submitted under this chapter for completeness. To be determined complete, an application must provide the information identified by the department in regulations adopted under AS 46.14.210 and in standard application forms provided by the department under AS 46.14.210(a)(1) [42 U.S.C. 7661a(b)(1),] and must be certified true and correct by the owner and operator.

(b) The department shall notify the applicant in writing whether the application is complete. Unless the department notifies the applicant within 60 [30] days of receipt of an application that the application is incomplete, the application shall be deemed to be complete.

(c) If, during the processing of an application after it has been determined or deemed to be complete, the department finds that additional information is necessary to evaluate or take action on that application, such information may be requested in writing from the owner and operator.

PROPOSED AMENDMENT TO CS HB377(JUD)

Sec. 46.14.240. GENERAL OPERATING PERMITS. After notice and opportunity for public comment and hearing, the department may, unless the permit is disapproved by the federal administrator, establish a general operating permit that would be applicable to more than one facility determined by the department to be similar in source structure. A general operating permit must contain provisions that meet the requirements of this chapter applicable to operating permits. A general operating permit becomes effective when the application is determined to be complete unless the department notifies the applicant that the general permit is not applicable to the facility [IS NOT EFFECTIVE FOR A SPECIFIC FACILITY UNTIL THE OWNER AND OPERATOR OF THE FACILITY HAS SUBMITTED AN APPLICATION UNDER AS 46.14.220 AND THE DEPARTMENT HAS ISSUED THE GENERAL PERMIT OPERATING PERMIT. THE DEPARTMENT SHALL ISSUE OR DENY A GENERAL OPERATING PERMIT WITHIN 30 DAYS AFTER RECEIPT OF A COMPLETE APPLICATION].

PROPOSED AMENDMENT TO DRAFT CS PREPARED BY PRODUCER'S COUNCIL

*Sec. 22. REPORT AND RECOMMENDATIONS ON PERMIT FEE PROGRAM.

(a) By January 31, 1993, the department [OF] shall provide to the legislature

(1) recommended legislation, together with any comments by the federal administrator ['S COMMENTS] as to its legal adequacy, to establish a permit fee program designed to

(A) be equitable and fair among owners and operators of facilities required to have permits; [, AND]

(B) meet the requirements of Title V of the Clean Air [WATER] Act, 42 U.S.C. 7401-7671q; and [.]

(C) assure maximum efficiency and minimize total cost of all program elements, including excessive staffing for permit applications and meetings, to be supported from permit fees. [;]

(2) a report to the legislature containing the proposed permit fee schedule, including

(A) a detailed discussion of the facts and rationale for the proposal;

(B) a detailed comparison of cost and staffing data using the number of permits issued or otherwise processed

annually under the air permit program set forth as AS 46.03.140-245 and other similar regulatory programs administered by the department,

(C) a comparison [COMPARISONS] of fee schedules based upon data from at least five other states with air permit programs similar to the program administered by the department.

(b) The department shall by November [OCTOBER] 15, 1992 publish for public review and comment drafts of the materials produced in response to subsection (a), and shall provide to the legislature by January 31, 1993, a summary of the public comments received, any alternative fee schedules suggested by the public and the department's analysis of and response to the public comments.

AMENDMENT PACKET #10 ADEC/ADOL 4/21/92
1 OF 1 PROPOSALS FOR Sec.260
W/ ASSOCIATE CHANGE Sec.270

PROPOSED AMENDMENT TO CS HB377(JUD)

Sec. 46.14.260. DURATION OF OPERATING PERMITS. (a) An operating permit under this chapter, including an operating permit that contains a compliance schedule, shall be issued for a fixed term of five years [established by the department that is no longer than five years and no shorter than three years] after the date of issue, except as provided for temporary operations [PERMITS] under AS 46.14.280 or unless a shorter term is requested by the permit applicant.

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

AMENDMENT PACKET #10 ADEC/ADOL 4/21/92
AMENDMENT Sec 270 TO SUPPORT Sec.260

PROPOSED AMENDMENT TO CS HB377(JUD)

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

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

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

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

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

(D) the permittee has failed to construct or modify a facility within the time period specified in a construction permit, if any, required under AS 46.14.205(a);

(2) modify, amend, or revoke and reissue a construction or operating permit if the department finds that the permit contains a material mistake or if requested by the owner and operator of the facility.

AMENDMENT PACKET #11 ADEC/ADOL 4/21/92

1 OF 1 PROPOSALS FOR MALFUNCTIONS

PROPOSED NEW SECTION TO CS HB377 (JUD)

Sec. 46.14.____ EXCESS EMISSION EVENTS CAUSED BY MALFUNCTIONS

An event occurring during the startup, shutdown, or malfunction of a source or the associated pollution control equipment which results in noncompliance with an emission standard, performance standard or emission limitation is an excess emission event. An unavoidable excess emission event shall not be considered a violation of the permit, except when an ambient air quality standard is exceeded. An unavoidable excess emission event shall not include events caused entirely or in part by improperly designed equipment, lack of preventive maintenance, careless or improper operation, or operator error. Nothing in this section limits the department's power to enjoin the emission or mandate corrective action.

Definitions for AS 46.14.990:

"Startup" means setting into operation any source, including associated pollution control equipment, process equipment or a process.

"Shutdown" means cessation of operation of any source, including associated pollution control equipment, process equipment or a process, for any reason.

"Malfunction" means any sudden and unavoidable failure of a source, including pollution control equipment and process equipment. A failure caused entirely or in part by poor maintenance, careless operation, or any other preventable condition or preventable equipment breakdown shall not be considered a malfunction.

7-GS2001ND
Lauterbach
5/8/92

**CS FOR SENATE BILL NO. 383 (RESOURCES)
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - SECOND SESSION**

BY THE SENATE RESOURCES COMMITTEE

**Offered:
Referred:**

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

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 fees charged for emission control permits; relating to civil and
3 criminal penalties, damages, and other remedies for air quality control violations; clarifying
4 the definition of 'hazardous substance' to include releases and threatened releases to the
5 atmosphere; amending the lien provisions relating to the oil and hazardous substance
6 release response fund; relating to inspection and enforcement powers of the Department
7 of Environmental Conservation; and providing for an effective date."**

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

**9 * Section 1. POLICY; PURPOSES. (a) It is the policy of the state to have a program to prevent,
10 abate, control, and identify air pollution that complies with 42 U.S.C. 7401 - 7671q (Clean Air Act), as
11 amended, and federal regulations adopted under those sections.**

**12 (b) The primary purpose of this Act is to bring the state into compliance with the 1990
13 amendments to the federal Clean Air Act codified at 42 U.S.C. 7401 - 7671q. Changes in state law are**

1 necessary to allow the state to continue to have primary management of air quality in the state and to
2 retain federal approval of the state's air quality control program in order to ensure the continued receipt
3 of federal highway and air pollution control money. The federal Environmental Protection Agency must
4 prohibit the approval of highway projects and highway grants, and may withhold air pollution control
5 grants, if the state does not comply with 42 U.S.C. 7401 - 7671q (Clean Air Act).

6 (c) It is the legislature's intent that the state comply with 42 U.S.C. 7401 - 7671q (Clean Air
7 Act) in a manner that meets the federal requirements, allows for efficient and cost effective processing
8 of permits, requires accountability from the Department of Environmental Conservation on matters
9 relating to recovery of program costs, and ensures the productivity of the state's businesses while
10 protecting the health and welfare of the state's residents.

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

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

17 CHAPTER 14. AIR QUALITY CONTROL.

18 ARTICLE 1. CLASSIFICATIONS AND STANDARDS.

19 Sec. 46.14.010. EMISSION CONTROL REGULATIONS. (a) After public hearing, the
20 department may adopt regulations under this chapter establishing ambient air quality standards
21 and emission standards as necessary to meet the requirements under 42 U.S.C. 7401 - 7671q
22 (Clean Air Act), as amended, for state air quality control programs. The standards established
23 under this section may be for the state as a whole or may vary in recognition of local conditions.

24 (b) Except as provided in AS 46.14.020 and 46.14.205(a)(3), the department may not
25 adopt a regulation that regulates air contaminants, sources or categories of sources, or facilities
26 that are not required to be regulated under federal law.

27 (c) Except as provided in (d) and (e) of this section, the department shall comply with
28 AS 46.14.015 before adopting a regulation that establishes an emission standard or ambient air
29 quality standard

30 (1) for which there is no corresponding federal standard; or

31 (2) that is more stringent than a corresponding federal standard.

1 (d) Notwithstanding AS 46.14.015 and (c) of this section, the department may, after
2 public hearing, adopt a regulation that establishes an emission standard for benzene or for open
3 burning without complying with AS 46.14.015.

4 (e) The department shall include an emission standard in a permit that is more stringent
5 than the otherwise applicable federal or state emission standard, and is not required to follow the
6 procedures of AS 46.14.015 in order to do so, if the more stringent standard is

7 (1) requested by the owner or operator to whom the permit is issued; or

8 (2) determined to be necessary based on the source-specific or facility-specific
9 determination required under 42 U.S.C. 7401 - 7671q or federal regulations adopted under those
10 sections.

11 (f) The department's regulations must provide for exemptions for fugitive emissions to
12 the extent allowed under federal laws and regulations.

13 (g) An emission standard adopted by the department may be applicable to individual
14 sources within a facility or to all sources within a facility. For purposes of determining
15 compliance with applicable regulations and with permit limitations, the department may allow
16 numerical averaging of the emissions of each air contaminant from several sources within a
17 facility if

18 (1) requested by the owner and operator; and

19 (2) allowed under 42 U.S.C. 7401 - 7671q.

20 (h) In implementing this chapter, the department may not require a person to use

21 (1) machinery, devices, or equipment from a particular supplier or produced by
22 a particular manufacturer if the applicable emission standard may be met by machinery, devices,
23 or equipment available from another supplier or manufacturer; or

24 (2) specific methods, processes, procedures, or equipment for the management and
25 operation of a facility regulated under this chapter except to the extent that the federal
26 administrator

27 (A) has adopted a design, equipment, work practice, or operational
28 standard under 42 U.S.C. 7412(h) for the control of a hazardous air pollutant; and

29 (B) has not approved an alternative hazardous air pollutant standard under
30 42 U.S.C. 7412(h)(3).

31 Sec. 46.14.015. SPECIAL PROCEDURES FOR MORE STRINGENT REGULATIONS;

1 ADVISORY PANEL. (a) Before adopting a regulation governed by AS 46.14.010(c), or seeking
2 legislative authorization to regulate an air contaminant, source, categories of sources, or facility,
3 or to adopt a more stringent ambient or emission standard than otherwise authorized under
4 AS 46.14.010, or issuing a permit that contains an equivalent emission limitation, the department
5 shall

6 (1) undertake or provide for competent scientific and technical studies of the air
7 contaminant, source, or category of sources; the studies shall be subjected to peer review;

8 (2) submit its findings, the studies performed under (1) of this subsection, and the
9 related peer review comments to a science advisory panel established under (b) of this section;

10 (3) make available to the public at convenient locations copies of the department's
11 proposed regulations or legislative authorization, the studies performed under (1) of this
12 subsection, the related peer review comments, the written opinions and recommendations of the
13 science advisory panel, the findings of the department describing the basis for the department's
14 proposed adoption of regulations, and an analysis of the technological and economic feasibility
15 of the proposal.

16 (b) To assist the department under (a) of this section or at any other time when the
17 department needs assistance to investigate the effects of air contamination on human health and
18 welfare or on the environment, the department shall appoint a science advisory panel consisting
19 of three persons. The panel members may not be employees of the department. The panel
20 members must be knowledgeable in the fields of science, health, or engineering, and at least one
21 of the members must have specific experience concerning the air contaminant or source the
22 department intends to regulate or investigate. Panel members are entitled to reimbursement for
23 travel expenses and per diem as authorized for boards and commissions under AS 39.20.180 and
24 to compensation of \$50 a day while performing duties required of the panel. AS 09.25.110 -
25 09.25.120 (public records law) and AS 44.62.310 (open meetings law) apply to a panel
26 established under this subsection. A panel shall submit its opinions and recommendations to the
27 department within 90 days after being requested to do so unless the department agrees to a longer
28 period of review.

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

30 (a) The department, by regulation, may classify facilities or sources that, in the department's
31 determination, are likely to cause or contribute to air pollution, according to the levels and types

1 of emissions and other characteristics that relate to air quality. The department may make a
2 classification under this subsection applicable to the state as a whole or to a designated area of
3 the state. The department shall base the classifications on consideration of health, economic, and
4 social factors, sensitivity of the receiving environment, and physical effects on property.

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

11 Sec. 46.14.030. STATE AIR QUALITY PLAN. The department shall act for the state
12 in any negotiations relative to the state air quality control plan developed under 42 U.S.C. 7401 -
13 7671q (Clean Air Act), as amended. The department may adopt regulations necessary to
14 implement the state plan.

15 ARTICLE 2. EMISSION CONTROL PERMIT PROGRAM.

16 Sec. 46.14.200. PERMITS FOR CONSTRUCTION, MODIFICATION, OR
17 OPERATION. (a) A person who intends to construct, install, modify, reconstruct, or establish
18 a facility subject to AS 46.14.205(a) must obtain a construction permit under this chapter.

19 (b) A person who operates or intends to operate a facility subject to AS 46.14.205(b)
20 must obtain an operating permit or an order or other determination of the department under this
21 chapter.

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

24 (d) The department shall ensure that permits issued, modified, amended, renewed, or
25 revoked and reissued under this chapter comply with the emission limitations and other
26 requirements of 42 U.S.C. 7401 - 7571q (Clean Air Act), applicable federal regulations, and the
27 state air quality control plan.

28 (e) If the federal administrator exempts a source from the requirements of 42 U.S.C.
29 7661a(a) (Clean Air Act, sec. 502(a)), the commissioner, by regulation, shall exempt that source
30 from equivalent requirements of this chapter.

31 Sec. 46.14.205. FACILITIES REQUIRING PERMITS. (a) Before constructing,

1 installing, modifying, reconstructing, or establishing a facility, the owner and operator shall obtain
2 a construction permit from the department if the facility is any one of the following:

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

5 (2) a new facility of a type classified under AS 46.14.020 that emits or has the
6 potential to emit greater than 100 TPY of a regulated air contaminant;

7 (3) a new facility of a type classified under AS 46.14.020 that has the potential
8 to violate the ambient air quality standards;

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

12 (5) an existing facility, otherwise described in (1), (2), (3), or (4) of this
13 subsection, for which

14 (A) a modification is proposed that would increase actual emissions of an
15 air contaminant by an amount equal to or greater than the emission quantity set out in
16 regulations adopted under AS 46.14.010; or

17 (B) reconstruction is proposed.

18 (b) The owner and operator of a facility shall obtain an operating permit from the
19 department if the facility is a facility subject to (a) of this section or a facility that

20 (1) emits or has the potential to emit greater than 100 TPY of a regulated
21 contaminant;

22 (2) emits or has the potential to emit greater than 10 TPY of a hazardous air
23 contaminant, or 25 TPY, in aggregate, of two or more hazardous air contaminants;

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

27 (4) contains another stationary source designated by the federal administrator or
28 the department, by regulation.

29 Sec. 46.14.210. EMISSION CONTROL PERMIT PROGRAM REGULATIONS. (a)
30 The department shall adopt regulations to address all procedural elements of the emission control
31 permit program, except procedural elements that relate only to the internal management of the

1 department and do not affect the public or govern the way the department deals with the public.
2 The regulations must be reasonable and adequate, and provide maximum flexibility in the
3 operation of a facility consistent with AS 46.14.010 and 42 U.S.C. 7401 - 7671q (Clean Air Act),
4 as amended, and applicable federal regulations. The regulations must include the following:

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

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

10 (3) procedures for

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

12 (B) processing and reviewing an application;

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

15 (D) issuing permits;

16 (4) reasonable standard permit conditions, including conditions for

17 (A) emission standards and limitations;

18 (B) monitoring, recordkeeping, and reporting for facilities subject to
19 AS 46.14.205;

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, or amending a permit that provide
26 maximum flexibility in the operation of the facility, including procedures to allow changes to a
27 permitted facility without requiring a permit modification, consistent with the purposes of this
28 chapter and with 42 U.S.C. 7401 - 7671q (Clean Air Act); and

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

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

4 Sec. 46.14.220. TIME FOR SUBMISSION OF PERMIT APPLICATIONS. (a) The
5 owner and operator of a facility required to have an operating permit under this chapter shall
6 submit the required application and monitoring, reporting, and quality assurance plan no later
7 than (1) 12 months after the date on which the facility becomes subject to AS 46.14.200(b); or
8 (2) 12 months after the date on which the federal administrator approves the state permit program
9 under 42 U.S.C. 7661a(d), whichever is later.

10 (b) The department may accept and begin processing applications filed earlier than the
11 submission date. Applications filed earlier may be given priority for permit issuance.

12 Sec. 46.14.222. COMPLETENESS DETERMINATION. (a) The department shall
13 review every application submitted under this chapter for completeness. To be determined
14 complete, an application must provide the information identified by the department in regulations
15 adopted under AS 46.14.210 and in standard application forms provided by the department under
16 AS 46.14.210(a)(1) and must be certified true and correct by the owner and operator.

17 (b) The department shall notify the applicant in writing whether the application is
18 complete. Unless the department notifies the applicant within 60 days of receipt of an application
19 that the application is incomplete, the application is considered to be complete.

20 (c) If, during the processing of an application after it has been determined or considered
21 to be complete, the department finds that additional information is necessary to evaluate or take
22 action on that application, the information may be requested in writing from the owner and
23 operator.

24 Sec. 46.14.225. ADMINISTRATIVE ACTIONS REGARDING PERMITS. (a) Except
25 as provided in AS 46.14.245 and 46.14.255(b), after receipt of a complete application, and after
26 notice and opportunity for public comment and hearing, the department shall issue or deny

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

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

31 (b) Notwithstanding (a) of this section, the department may establish a phased schedule

1 for acting on operating permit applications submitted within the time required under
2 AS 46.14.220. A phased schedule must ensure that at least one-third of the applications
3 submitted during the initial application period will be acted on by the department during each of
4 the three years following the initial application period. The department shall give priority to the
5 issuance of permits for new facilities and modifications of existing facilities.

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

9 Sec. 46.14.230. REVIEW OF PERMIT ACTION. If aggrieved by a permit action under
10 this chapter, the owner and operator, a person who participated in the public comment process,
11 or a person who has a private, substantive, legally protected interest under state law that may be
12 adversely affected by the permit action may request an adjudicatory hearing under the
13 department's adjudicatory hearing procedures. After the issuance of an adjudicatory hearing
14 decision, a party to the hearing may obtain judicial review of that decision as provided in Alaska
15 Rules of Appellate Procedure.

16 Sec. 46.14.232. MONITORING. Monitoring by the owner and operator of stack
17 emissions or ambient air quality shall be required by the department only for purposes of
18 demonstrating compliance with applicable permit requirements. Monitoring requirements must
19 be reasonable and based on test methods, analytical procedures, and statistical conventions
20 approved by the federal administrator or the department or otherwise generally accepted as
21 scientifically competent. Unless otherwise agreed to by the owner and operator and the
22 department,

23 (1) the department may not require an owner and operator of a source to monitor
24 emissions or ambient air quality solely for the purpose of scientific investigation or research; and

25 (2) monitoring activities must be consistent with the applicable emission standards
26 and other permit or permit application requirements.

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

29 Sec. 46.14.240. GENERAL OPERATING PERMITS. After notice and opportunity for
30 public comment and hearing, the department may, unless the permit is disapproved by the federal
31 administrator, establish a general operating permit that would be applicable to more than one

1 facility determined by the department to be similar in source structure. A general operating
2 permit must contain provisions that meet the requirements of this chapter applicable to operating
3 permits. A general operating permit takes effect when the application is determined to be
4 complete unless the department notifies the applicant that the general permit is not applicable to
5 the facility.

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

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

18 (c) While a petition under (b) of this section is pending, compliance with an operating
19 permit issued under (a) of this section is considered to be compliance with the operating permit
20 program established under this chapter for purposes of AS 46.14.285.

21 Sec. 46.14.250. PAYMENT OF FEES. The owner and operator of a facility who is
22 required to apply for a permit under AS 46.14.205 shall pay the applicable fees established by
23 the department under AS 44.46.025(a). The owner and operator shall pay the fees to the
24 department or to the public entity designated by the department.

25 Sec. 46.14.255. INTEREST FOR NONPAYMENT. (a) The department may assess
26 interest against the owner and operator, computed under AS 45.45.010(a), after a fee is due under
27 this chapter and is unpaid.

28 (b) If a permittee has failed to pay a fee imposed under AS 46.14.250 or interest
29 imposed under (a) of this section, the department may, after 30 days' written notice to the
30 permittee refuse to issue or renew permits requested by the permittee or refuse to amend or
31 modify a permit when the amendment or modification is requested by the permittee.

1 Sec. 46.14.260. DURATION OF OPERATING PERMITS. (a) An operating permit
2 under this chapter, including an operating permit that contains a compliance schedule, shall be
3 issued for a fixed term of five years after the date of issue, except as provided for temporary
4 operations under AS 46.14.280 or unless a shorter term is requested by the permit applicant.

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

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

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

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

24 (d) The department shall provide written notice of intent to reopen and revise a permit
25 issued under this chapter to the owner and operator of a facility not less than 30 days before the
26 date the permit is to be reopened, except that the department may provide a shorter period in the
27 event of an emergency.

28 Sec. 46.14.267. AMENDMENT OF PERMIT. (a) A permit may be amended on
29 application of an owner and operator if the proposed amendments relate to operational changes
30 that do not

31 (1) result in an exceedance of allowable emissions specified in the permit;

1 (2) violate an express prohibition in the permit; or

2 (3) qualify as a modification.

3 (b) The application for an amendment under this section must contain

4 (1) a description of the change;

5 (2) schematic drawings, if appropriate, representing the change; and

6 (3) certification by the owner and operator that the proposed amendment meets
7 the criteria for amendment.

8 (c) The owner and operator shall file the proposed amendment with the department
9 personally or by certified mail. The department shall have seven work days after receipt in
10 which to object to the amendment. If the department fails to object, the owner and operator may
11 proceed in accordance with the amendment. If the department objects to the amendment, the
12 department shall notify the owner and operator in person or by certified mail. The department
13 shall state its objection in writing with particularity. If the owner and operator agree with the
14 objection, they may file an amendment that complies with the objection. If the owner and
15 operator disagree with the objection, they shall, within seven days of receipt of the objection,
16 inform the department of their disagreement and provide additional information necessary to
17 explain the disagreement. The department shall accept or reject the amendment within seven
18 days after receiving the additional information.

19 (d) The owner and operator may request a hearing to review the rejection of the
20 amendment within 30 days after receipt of the notice of rejection. Failure to request a hearing
21 within 30 days after the receipt of the rejection constitutes a waiver of the right of review.

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

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

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

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

1 issued under this chapter; or

2 (C) the permittee has failed to construct or modify a facility within the
3 time period specified in the construction permit, if any, required under AS 46.14.205(a);

4 (2) modify, or revoke and reissue a construction or operating permit if

5 (A) the department finds that the permit contains a material mistake;

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

8 (C) the owner and operator request the action.

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

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

23 Sec. 46.14.285. PERMIT AS SHIELD. (a) Compliance with an operating permit, order,
24 or other determination issued under this chapter is considered to be compliance with this chapter.

25 (b) Nothing in this section alters or affects

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

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

30 Sec. 46.14.290. TIMELY AND COMPLETE APPLICATION AS SHIELD. If an owner
31 and operator have submitted a timely and complete application for a permit or a permit renewal,

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

8 Sec. 46.14.295. UNAVOIDABLE MALFUNCTIONS. Excess emissions caused by
9 startup, shutdown, malfunction, or nonroutine repairs of a source including pollution control
10 equipment or process equipment may not be considered a violation of a permit or the emission
11 limitation or counted as an increase in emissions unless an ambient air quality standard is
12 exceeded. Nothing in this section limits the department's power to enjoin the emission or require
13 corrective action.

14 Sec. 46.14.297. INSPECTION. An officer or employee of the department designated by
15 the commissioner may, upon presentation of credentials and at reasonable times, enter upon or
16 through any premises of a facility regulated under this chapter to

- 17 (1) inspect and copy any records required to be maintained;
18 (2) inspect any source, monitoring equipment, or method required to be used; or
19 (3) sample any emissions that the owner and operator of the facility is required
20 to sample.

21 ARTICLE 3. MOTOR VEHICLE POLLUTION CONTROL PROGRAM.

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

28 (c) Unless otherwise exempted by law, a person shall maintain in operating condition any
29 element of the air pollution control system or mechanism of a motor vehicle that the department,
30 by regulation, requires to be maintained in or on the motor vehicle. Failure to maintain a
31 required system or mechanism in operating condition subjects the motor vehicle's registration to

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

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

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

16 ARTICLE 4. SMALL BUSINESS ASSISTANCE PROGRAM.

17 Sec. 46.14.400. DEVELOPMENT OF PROGRAM. A small business assistance program
18 is established in the department. The program shall be included in the state air quality control
19 plan under AS 46.14.030.

20 Sec. 46.14.410. SCOPE OF PROGRAM. (a) The small business assistance program
21 shall

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

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

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

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

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

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

7 (7) provide small business facility operators with a list of auditors available for
8 auditing the operation of the facility;

9 (8) assist in developing and implementing modified work practices or technical
10 changes to processes to facilitate compliance with this chapter and regulations adopted under this
11 chapter as authorized under 42 U.S.C. 7661f(q)(7) and related federal regulations;

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

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

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

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

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

27 Sec. 46.14.420. POWER TO LIMIT PROGRAM. After consultation with the federal
28 administrator and the administrator of the United States Small Business Administration, and after
29 providing notice and opportunity for public hearing, the department may exclude from the scope
30 of the small business assistance program established in AS 46.14.410 a category or subcategory
31 of small business facilities that the department finds to have sufficient technical and financial

1 capabilities to meet the requirements of this chapter and federal law without the assistance
2 provided under AS 46.14.400 - 46.14.430.

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

6 (b) The panel consists of

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

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

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

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

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

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

24 (c) The compliance advisory panel shall

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

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

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

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

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

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

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

7 ARTICLE 5. LOCAL PROGRAMS.

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

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

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

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

26 (2) local air contaminant sources; or

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

28 (d) A municipality or a local air quality district seeking department approval for a local
29 air quality control program shall enter into a cooperative agreement with the department that is
30 designed to avoid unnecessary duplication of responsibilities. The cooperative agreement must
31 include provisions specifying

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

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

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

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

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

11 (f) A municipality or a local air quality district administering a program under this
12 section shall administer its local air quality control program according to this chapter, regulations
13 adopted under this chapter, and its cooperative agreement under (d) of this section. A
14 municipality's or local air quality district's program may not be more stringent than the program
15 administered by the department.

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

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

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

1 quality district to take corrective action in response to the department's finding.

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

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

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

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

27 ARTICLE 6. MISCELLANEOUS PROVISIONS.

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

1 Sec. 46.14.810. CONFIDENTIALITY OF RECORDS. Records, reports, and information,
2 and parts of records, reports, and information, other than emission data, in the department's
3 possession and control are considered confidential records and shall be kept confidential and in
4 separate files if,

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

8 (2) the records, reports, or information, or parts of the records, reports, or
9 information, would divulge production figures, sales figures, processes, production techniques,
10 or financial data of the owner and operator that are entitled to protection as trade secrets.

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) An
18 officer or employee of the department designated by the commissioner may assess an
19 administrative penalty against a person who violates, or causes, or allows to be violated a
20 provision of this chapter, a regulation adopted under this chapter, or a material term or condition
21 of an order, permit, or approval of the department under this chapter.

22 (b) An administrative penalty assessed under this section may not exceed \$1,000 a day
23 per source for each offense, subject to a maximum of \$5,000 a day for no more than 10 days,
24 regardless of the number of sources and offenses during those 10 days. An assessment under this
25 section may not be made more than one year after the date of violation. If a violation of a
26 provision, regulation, term, or condition continues from day to day, each day is a separate
27 offense. However, an assessment may not be made for a day that occurred before the owner and
28 operator received written notice of the violation. In determining the amount of a penalty assessed
29 under this section, the department may consider the effect of the offense on the public health or
30 the environment, the size of the business, the economic effect of the penalty on the business, the
31 violation's good faith effort to comply, prior history of compliance or noncompliance with this

1 chapter, the need to deter future offenses, the economic benefit of noncompliance realized by the
2 offender, the duration of the violation as established by credible evidence other than the
3 applicable test method, payment by the violator of penalties previously assessed for the same
4 violation, the seriousness of the violation, and other factors that the department considers
5 relevant. The department shall, by regulation, prepare, publish, and make available to interested
6 persons, a penalty policy describing the factors to be considered in setting penalties, the methods
7 for weighing the factors, and other aspects of penalty computation.

8 (c) If a penalty is assessed under this section, the department shall provide the assessment
9 notice to the person affected, by personal service or by certified mail, return receipt requested.
10 An administrative penalty assessed under this section becomes a final agency action 30 days after
11 service or mailing of the assessment notice unless an administrative hearing is requested by the
12 person against whom the penalty is assessed. Failure to request an administrative hearing within
13 30 days after service or mailing of the assessment notice constitutes a waiver of that person's
14 right to an administrative hearing. The department may extend the time periods specified in this
15 subsection for good cause.

16 (d) If an administrative hearing is requested, the department shall grant a hearing and
17 conduct the hearing in accordance with its adjudicatory hearing procedures. In the hearing, the
18 department bears the burden of proving the violation. After the hearing, the department may
19 modify, rescind, or affirm the administrative penalty. The modification, rescission, or affirmation
20 of a penalty under this subsection is a final agency action.

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

26 (f) In lieu of an administrative penalty under this section, the officer or employee
27 authorized under (a) of this section to assess the penalty may order a person to take appropriate
28 action to abate the violation within a reasonable period of time. An order to take appropriate
29 abatement action shall be issued for a first violation of a permit requirement that is not a
30 violation of an emission standard or limitation contained in the permit. The person to whom the
31 order is issued shall, within the time specified in the order, certify in writing to the department

1 that the violation has been abated. A person may not be assessed an administrative penalty and
2 given an order under this subsection for the same violation.

3 (g) Action under this section by the department is an exclusive remedy and prohibits the
4 department from otherwise enforcing this chapter, obtaining an injunction or recovering damages,
5 civil and criminal penalties, restoration expenses, investigation costs, court costs, attorney fees,
6 or other necessary expenses for the same violation.

7 (h) The assessment of an administrative penalty under this section does not affect the
8 obligation of a person to comply with this chapter or with a regulation, order, permit, or approval
9 of the department under this chapter.

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

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

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

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

19 (j) Settlement of an action under this section is not considered to be an admission of fact
20 or law, does not preclude the person from raising an available defense and may not otherwise be
21 used as evidence against the person in other proceedings, including permit approvals or renewals,
22 citizens' suits, or later enforcement actions, except that in an enforcement action brought under
23 AS 46.03.760 or 46.03.790, or in a proceeding to renew or issue a permit under this chapter,
24 evidence of more than three violations by a person for the same offense may be used for the
25 purpose of determining penalties, the terms and conditions of a permit, or whether to issue or
26 renew a permit.

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

29 (1) fees, penalties, and interest collected by the department under AS 46.14.250
30 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))
31 for state participation in the emission control permit program; and

1 (2) appropriations to the fund.

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

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

10 ARTICLE 7. GENERAL PROVISIONS.

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

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

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

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

18 Sec. 46.14.990. DEFINITIONS. In this chapter,

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

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

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

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

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

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

1 a physical change, that would result in emissions;

2 (7) "construction permit" means a permit under AS 46.14.205(a);

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

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

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

8 (11) "emission standard" means a limit on the release of an air contaminant from
9 a facility, contaminant outlet, or fugitive emission source specified as

10 (A) a performance standard requiring a minimum efficiency or emission
11 reduction rate achieved by a device or activity; or

12 (B) an emission limitation establishing a maximum allowable quantity,
13 rate, or concentration to be released from the source;

14 (12) "equivalent emission limitation" means

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

19 (B) if the criteria of the early reduction program established in 42 U.S.C.
20 7412(i)(5) (Clean Air Act, sec. 112(i)(5)) are met, a limitation established under that
21 subsection and 42 U.S.C. 7412(j)(5) (Clean Air Act, sec. 112(j)(5));

22 (13) "excess emission" means the emission of an air contaminant in excess of an
23 applicable emission standard in a permit or other applicable regulation;

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

27 (15) "federal administrator" means the administrator of the United States
28 Environmental Protection Agency;

29 (16) "fugitive emissions" means emissions of an air contaminant that could not
30 reasonably be emitted from a contaminant outlet;

31 (17) "hazardous air contaminant" means a pollutant listed in or under 42 U.S.C.

1 7412(b) (Clean Air Act, sec. 112(b));

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

4 (19) "major facility" means a facility that emits or has the potential to emit at
5 least

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

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

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

9 (20) "malfunction" means a sudden and unavoidable failure of a source, including
10 air pollution control equipment and process equipment, or of a process to operate in a normal or
11 usual manner; "malfunction" does not include a failure that is caused entirely or in part by poor
12 maintenance or careless operation or another reasonably preventable upset condition or reasonably
13 preventable equipment breakdown;

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

17 (22) "operating permit" means a permit under AS 46.14.205(b);

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

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

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

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

- 1 (A) a one-time, accidental release of an air contaminant; or
2 (B) the fugitive emissions specifically exempted under the department's
3 regulations;

4 (27) "reconstruct" means to replace components of a facility with new components
5 to such an extent that the fixed capital cost of the new components exceeds 50 percent of the
6 fixed capital cost that would be required to construct a comparable entirely new facility;

7 (28) "register" or "registration" means vehicle registration under AS 28.10;

8 (29) "regulated air contaminant" means

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

11 (B) oxides of nitrogen;

12 (C) a volatile organic compound; and

13 (D) a pollutant that is addressed by a standard adopted under 42 U.S.C.
14 7411 - 7412 (Clean Air Act, sec. 111 - 112);

15 (30) "shutdown" means the cessation of operation of any source, including
16 pollution control equipment, process equipment or a process, for any purpose;

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

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

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

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

22 (32) "source" means a device, process, activity, or equipment that causes, or could
23 cause, a release of an air contaminant;

24 (33) "startup" means the setting into operation of any source, including associated
25 pollution control equipment, process equipment or process, for any purpose;

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

27 * Sec. 3. AS 14.09 is amended by adding a new section to read:

28 Sec. 14.09.030. ALTERNATIVE-FUELED BUSES. The department shall develop plans
29 to encourage contractors that provide school bus transportation to procure alternative-fueled
30 buses. In this section, "alternative-fueled" means capable of operating on a fuel such as
31 compressed natural gas, liquefied petroleum gas, liquefied natural gas, methanol, ethanol, or

1 electricity that, compared to operation on regular fuel, results in lower emissions of oxides of
2 nitrogen, volatile organic compounds, carbon monoxide, or particulates.

3 * Sec. 4. AS 36.30 is amended by adding a new section to article 1 to read:

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

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

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

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

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

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

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

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

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

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

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

3 (1) provide transportation systems;

4 (2) provide water pollution control;

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

7 (4) license day care facilities;

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

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

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

12 (1) provide transportation systems;

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

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

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

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

20 (6) provide water pollution control;

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

23 (8) provide for economic development;

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

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

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

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

30 (13) contain, clean up, or prevent a release or threatened release of oil or a
31 hazardous substance, and exercise a power granted to a municipality under AS 46.04, AS 46.08,

1 or AS 46.09; the borough shall exercise its authority under this paragraph in a manner that is
2 consistent with a regional master plan prepared by the Department of Environmental
3 Conservation under AS 46.04.210.

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

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

7 (1) provide transportation systems;

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

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

11 (4) provide water pollution control;

12 (5) license day care facilities.

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

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

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

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

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

21 (2) the emission control permitting program and the motor vehicle pollution
22 control program under AS 46.14 [AIR QUALITY PERMITS UNDER AS 46.03.140 AND
23 46.03.160];

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

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

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

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

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

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

31 (44) Department of Environmental Conservation, except to the extent that

1 AS 44.62.360 - 44.62.400 are inconsistent with the manner in which proceedings are initiated
2 under the provisions of AS 46.03 and AS 46.14;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 Sec. 46.03.875. REMEDIES CUMULATIVE. Except as provided in AS 46.14.830,
9 [ALL] remedies provided by this chapter, [OR] AS 46.04, or AS 46.14 are cumulative, and the
10 securing of relief, whether injunctive, civil, or criminal, under a section of this chapter, [OR]
11 AS 46.04, or AS 46.14 does not stop the state from obtaining relief under any other section of
12 this chapter, [OR] AS 46.04, or AS 46.14.

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

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

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

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

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

28 (6) "hazardous substance" means an element or compound that, when it enters into
29 the atmosphere or into or on the surface or subsurface land or water of the state, presents an
30 imminent and substantial danger to the public health or welfare, or to fish, animals, vegetation,
31 or any part of the natural habitat in which fish, animals, or wildlife may be found; or (B) a

1 substance defined as a hazardous substance under 42 U.S.C. 9601 - 9657 (Comprehensive
2 Environmental Response, Compensation, and Liability Act of 1980); "hazardous substance" does
3 not include uncontaminated crude oil or uncontaminated refined oil in an amount of 10 gallons
4 or less;

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

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

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

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

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

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

20 * Sec. 27. AS 46.03.140, 46.03.150, 46.03.160, 46.03.170, 46.03.180, 46.03.190, 46.03.210,
21 46.03.220, 46.03.225, 46.03.230, and 46.03.245 are repealed.

22 * Sec. 28. REGULATIONS. (a) The Department of Environmental Conservation may adopt
23 regulations as authorized under AS 46.14, enacted by sec. 2 of this Act, and other statutory authority,
24 to implement changes made by this Act. Regulations adopted under this section may not take effect until
25 the enabling statute takes effect under sec. 32 or sec. 33 of this Act.

26 (b) Notwithstanding the repeal of AS 46.03.140 - 46.03.245 by sec. 27 of this Act, the
27 regulations adopted under those sections that are in effect on the day immediately preceding the effective
28 date of sec. 1 of this Act remain in effect until amended or repealed by regulations adopted under this
29 Act.

30 * Sec. 29. COOPERATION. The Department of Transportation and Public Facilities and the
31 Department of Environmental Conservation shall cooperate with each other as necessary to achieve

1 implementation of AS 36.30.097, enacted by sec. 4 of this Act, by July 1, 1994.

2 * **Sec. 30. REPORT TO LEGISLATURE.** (a) By January 31, 1993, the Department of
3 Environmental Conservation shall submit a report to the legislature that includes

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

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

10 (B) equitably allocate direct and indirect costs of the program among owners and
11 operators of facilities that are required to have permits under AS 46.14; and

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

15 (2) the department's recommendations for a fee schedule for permits issued under
16 AS 46.14, including

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

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

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

24 (D) a recommended late payment penalty; and

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

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

31 * **Sec. 31.** Sections 3 and 4 of this Act take effect July 1, 1994.

1 * Sec. 32. AS 46.14.010, 46.14.015, 46.14.020, 46.14.030, 46.14.200(a) and (c) - (e),
2 46.14.205(a)(1) - (3) and (5), 46.14.210, 46.14.225, 46.14.230, 46.14.232, 46.14.235, 46.14.250,
3 46.14.255, 46.14.270, 46.14.280, 46.14.295, 46.14.297, 46.14.300, 46.14.400, 46.14.410, 46.14.420,
4 46.14.430, 46.14.500, 46.14.510, 46.14.520, 46.14.800 - 46.14.850, 46.14.900, and 46.14.990, enacted
5 by sec. 2 of this Act, and secs. 1 and 5 - 30 of this Act take effect immediately under AS 01.10.070(c).
6 * Sec. 33. AS 46.14.200(b), 46.14.205(a)(4) and (b), 46.14.220, 46.14.222, 46.14.240, 46.14.245,
7 46.14.260, 46.14.265, 46.14.267, 46.14.275, 46.14.285, and 46.14.290, enacted by sec. 2 of this Act, take
8 effect on the day after the day the federal administrator approves the state permit program under 42
9 U.S.C. 7661a(d). The commissioner of environmental conservation shall immediately notify the
10 lieutenant governor and the revisor of statutes of the day of the federal administrator's approval.