

HB

167

# HOUSE COMMITTEE REPORT

(7)

Date Referred: February 19, 1993

FURTHER REFERRALS:

Finance

Date of Committee Action: 4-6-93

The JUDICIARY Committee considered:  
HOUSE BILL NO. 167

HB 167  
**AIR QUALITY CONTROL PROGRAM**

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

**RECOMMENDATIONS:**

be replaced with CS HB 167 (Jul)  the same title  a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of Intent

ATTACHES NEW FISCAL NOTE(S): \_\_\_\_\_ (Dept)

APPROVES PREVIOUS: \_\_\_\_\_ (Dept/Date)

fiscal impact DEC 3-8-93

fiscal note(s) \_\_\_\_\_

zero fiscal note \_\_\_\_\_

zero fiscal note(s) \_\_\_\_\_

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Pete Best</i>	<input checked="" type="checkbox"/>	<i>Joseph P. ...</i>			<input checked="" type="checkbox"/>
<i>Gail Phillips</i>	<input checked="" type="checkbox"/>	<i>Ken ...</i>	<input checked="" type="checkbox"/>		
<i>Jeanette ...</i>	<input checked="" type="checkbox"/>	<i>Chip Davidson</i>	<input checked="" type="checkbox"/>		
<i>Brian Porter</i>	<input checked="" type="checkbox"/>				

*Brian Porter*  
CHAIRMAN'S SIGNATURE

A M E N D M E N T # 1

OFFERED IN THE HOUSE

BY REPRESENTATIVE HANLEY

TO: CSHB 167( ) (Draft 8-LS0492K)

Page 2, line 21:

Delete "there is no"

Insert "the federal administrator has not adopted a"

APR 05 1993

Page 2, line 25, through page 3, line 3:

Delete all material and insert:

"(c) Before adopting a regulation described under (b) of this section, the department shall demonstrate that

(1) exposure profiles and either meteorological conditions or source characteristics in the state or in an area of the state reasonably require the ambient air quality standard, emission standard, or emission limitation to protect human health and welfare or the environment; and

(2) the proposed standard or emission limitation is technologically and economically feasible.

(d) Before adopting a regulation described in (b)(2) of this section, the department shall also demonstrate that exposure profiles and either meteorological conditions or source characteristics are significantly different in the state or in an area of the state from those upon which the corresponding federal regulation is based."

Reletter the following subsections accordingly.

Page 3, lines 17 - 23:

Delete all material and insert:

"Sec. 46.14.015. SPECIAL PROCEDURE FOR MORE STRINGENT REGULATIONS. (a) Before adopting a regulation described under AS 46.14.010(b),

the department shall provide written findings that the factors required under AS 46.14.010(c) and (d), as applicable, have been demonstrated. Written findings under this subsection shall be made available by the department to the public at convenient locations."

A M E N D M E N T

# 2

OFFERED IN THE HOUSE

BY REPRESENTATIVE NORDLUND

TO: CSHB 167( ) (Draft 8-LS0492K)

Page 14, line 28, after "department":

Insert "and other state or local governmental agencies, to the extent required under 42 U.S.C. 7661a(b)(3)(A) and federal regulations implementing that provision,"

Page 17, line 18, after "department":

Insert "and other state or local governmental agencies, to the extent required under 42 U.S.C. 7661a(b)(3)(A) and federal regulations implementing that provision,"

# DIVISION OF LEGAL SERVICES

## LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

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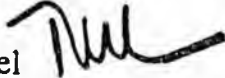
130 Seward Street, Suite 409  
Juneau, Alaska 99801-2105

### MEMORANDUM

February 18, 1993

**SUBJECT:** Permit Fees under the State Air Quality Program (SSHB 39)

**TO:** Representative Kay Brown

**FROM:** Terri Lauterbach   
Legislative Counsel

When you submitted material to me for the preparation of SSHB 39, you asked me to comment on any provisions that did not appear to comply with the federal Clean Air Act. I did so at that time. However, I assume your request is a continuing one, so I have another issue to bring to your attention at this time.

The issue concerns the fee language in sec. 5 of SSHB 39. On page 9, line 26, and page 11, line 6, the phrase used in reference to setting the amount of fees to recover costs of the program is the phrase "costs incurred by the department." This phrase does not appear to me to satisfy the federal requirement in 42 U.S.C. 7661a(b)(3)(A) that fee levels be set to cover "all reasonable (direct and indirect) costs required to develop and administer the permit program."

The reason "costs incurred by the department" might not satisfy this federal requirement is because the federal regulation implementing 42 U.S.C. 7661a(b)(3)(A) defines "permit program costs" that must be covered by the fees to include costs of state and local agencies other than the department as well as the department's costs. In 40 C.F.R. 70.2, "permit program costs" is defined to mean

... all reasonable (direct and indirect) costs required to develop and administer a permit program, as set forth in sec. 70.9(b) of this part (whether such costs are incurred by the permitting authority or other State or local agencies that do not issue permits directly, but that support permit issuance or administration).

By specifying that the fees be set in order to recover only the costs incurred by the department (DEC), the language appears to me to be too narrow. For instance, it would, arguably, include only DEC's costs to oversee a local air quality program, not the municipal costs of developing and implementing the local program itself. Perhaps

there are also costs to state agencies other than DEC, but I'm not sure of that without further information.

Suffice it to say at this time that DEC and the Department of Law should take a careful look at this language again because they must be able to demonstrate to the federal government that the permit fees required by the state program are "sufficient to cover permit program costs" as those costs are defined in the federal regulations. (See 40 C.F.R. 70.4(b)(4)(7).)<sup>1/</sup>

My initial suggestion at this point, as far as new language is concerned would be to amend both places (page 9, line 26, and page 11, line 6) to delete "department" and insert "state and local agencies." I would also be happy to review curative language that may be suggested by anyone else.

I have enclosed a copy of the federal law and regulation cited in this memo. Please let me know if I can be of further assistance.

TML:gc  
93-138.glc

Enclosure

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<sup>1/</sup> DEC and Law should probably also review page 12, lines 28 - 30, of SSHB 39. This language is about using the fee money. Under the federal Clean Air Act, the fee money must be used "solely to cover all reasonable (direct and indirect) costs required to support the permit program." (42 U.S.C. 7661a(b)(3)(C)(iii), emphasis added.) Therefore, the issue of how the federal regulations define "permit program costs" also arises in this context. Currently, SSHB 39 parrots the federal language on page 12, lines 29 - 30, and does not seem to require that the fee money be used solely by DEC. This is as it should be. Money should be available from the dedicated fund for appropriation to any state or local agency incurring costs to develop or administer the permit program. This is why it is particularly important that the fee levels be set to cover these costs, not just the costs incurred by DEC.

*passed*

8-LS0492K.5 ✓  
Lauterbach  
4/5/93

A M E N D M E N T #3

OFFERED IN THE HOUSE BY REPRESENTATIVE NORDLUND  
TO: CSHB 167( ) (Draft 8-LS0492K)

Page 4, line 10, after "Code).":

Insert "The department may not select a person to perform peer review under this section for a regulation that, if adopted, would set a requirement that must be complied with by a facility owned or operated by the person or by the person's employer."

*fails*

8-LS0492K.9 ✓  
Lauterbach  
4/5/93

AMENDMENT #4

OFFERED IN THE HOUSE BY REPRESENTATIVE NORDLUND  
TO: CSHB 167( ) (Draft 8-LS0492K)

Page 14, line 2:

Delete "including"

Insert "other than"

Page 14, line 5, after ".":

Insert "An operating permit that contains a compliance schedule shall be issued for a term of up to five years."

*fails*

8-LS0492K.2 ✓  
Lauterbach  
4/5/93

A M E N D M E N T #6

OFFERED IN THE HOUSE

BY REPRESENTATIVE NORDLUND

TO: CSHB 167( ) (Draft 8-LS0492K)

Page 12, line 20:

Delete "private, substantive,"

DIVISION OF LEGAL SERVICES

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Juneau, Alaska 99801-2105

MEMORANDUM

February 18, 1993

**SUBJECT:** Standing to Obtain Review of Air Quality Permit Actions  
(SSHB 39)

**TO:** Representative Kay Brown  
ATTN: Dan

**FROM:** Terri Lauterbach *TL*  
Legislative Counsel

You have asked me to review AS 46.03.163, which would be enacted by Sec. 4 of SSHB 39, to determine if the standing requirement in that section would satisfy 42 U.S.C. 7661a(b)(6) (sec. 502(b)(6) of the federal Clean Air Act).

In my opinion, AS 46.03.163 probably does not comply with the federal law. While all of its terms are not clear, the section appears to narrow the scope of standing that is otherwise recognized under Alaska's broad standing requirements. This narrowing does not appear to me to be authorized under the regulations that implement 42 U.S.C. 7661a(b)(6). To ensure compliance with the federal Clean Air Act, I recommend deletion of the words "private" and "substantive" from page 7, line 22 of SSHB 39.

DISCUSSION

The federal Clean Air Act specifies that a state program submitted for federal approval must include provisions that allow

... an opportunity for judicial review in State court of the final permit action by the applicant, any person who participated in the public comment process, and any other person who could obtain judicial review of that action under applicable law. (42 U.S.C. 7661a(b)(6), in part, emphasis added)

Based on this provision alone, one could argue that "applicable law" means applicable federal law and that the state must show only that its air quality permit program

ensures standing to persons who meet the standing requirements of federal law, regardless of whether the state's standing requirements are broader or stricter.

I do not think that would be a strong argument since the state's program submittal is intended to show how the state's statutes and laws would be used to implement the air quality program. In the context of the state's submittal, I conclude that it would be more reasonable to construe "applicable law" in this federal provision to mean the state's laws on standing.

More importantly, the federal regulations implementing 42 U.S.C. 7661a(b)(6) come to the same conclusion. In 40 C.F.R. 70.4(b)(3)(x), the regulations specify that the initial program submittal of a state seeking federal approval must contain a legal opinion demonstrating that the state's air quality program

provide[s] an opportunity for judicial review in State court of the final permit action by the applicant, any person who participated in the public participation process, . . . and any other person who could obtain judicial review of such actions under State laws.

Based on this regulation, the issue relevant to your question is whether AS 46.03.163 grants standing to persons who ordinarily would have standing under Alaska law. It appears to me that it does not.

AS 46.03.163 provides, in pertinent part, as follows:

If aggrieved by a permit action under AS 46.03.140 - 46.03.249, the owner and operator, a person who participated in the public comment process, or a person who has a private, substantive, legally protected interest under state law that may be adversely affected by the permit action may request an adjudicatory hearing. . .

It is not clear to me what the meanings of "private" and "substantive" are. They are not terms that I have found discussed in relevant case law about standing. However, it seems clear enough that they are intended as words of limitation with respect to the term "legally protected interest." In other words, not all legally protected interests would be included under the section's language, only "private" and "substantive" ones. For instance, the requirement that an interest be "substantive" might, arguably, exclude aesthetic or environmental interests or threats of future injury. These types

Representative K Brown  
February 18, 1993  
Page 3

of interest have been found sufficient for standing under Alaska case law.<sup>1/</sup> They might be excluded under AS 46.03.163 as currently written.

Even if I am incorrect in assessing what kinds of interests may be excluded by the terms "private" and "substantive," their limiting nature is apparent and, reportedly, not inadvertent. According to the material you sent me, AS 46.03.163 was purposely crafted by an ad hoc committee that intended for the language to reflect the more narrow scope of standing granted under federal law. If so, the committee's intention was misguided. As is clear from 40 C.F.R. 70.4(b)(3)(x), the relevant guide for standing under a state's air quality program is state law.

In conclusion, because the terms "private" and "substantive" are not clear and, as words of limitation, would not comply with the federal Clean Air Act's requirement in 42 U.S.C. 7661a(b)(6), I recommend their deletion from AS 46.03.163.

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I have enclosed a copy of the federal regulation cited in this memo. Please let me know if I can be of other assistance.

TML:gc  
93-137.glc

Enclosure

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<sup>1/</sup> See State v. Lewis, 559 P.2d 630, 635 (Alaska 1977), cert. den. 432 U.S. 901 (1977); Johns v. Commercial Fisheries Entry Commission, 699 P.2d 334 (Alaska 1985); and State v. Enserch Alaska Const., Inc., 787 P.2d 624, 629 - 630 (Alaska 1989).

*Passed*

8-LS0492K.4 ✓  
Lauterbach  
4/5/93

*#7*

A M E N D M E N T

OFFERED IN THE HOUSE

BY REPRESENTATIVE NORDLUND

TO: CSHB 167( ) (Draft 8-LS0492K)

~~Page 20, line 18, after chapter.~~

Insert "The department <sup>may</sup> shall adopt regulations ~~to implement this section~~ that include procedures under which the public may participate when an amendment or modification is requested under this <sup>provision</sup> section."

*Line 11 after*

FAILED

AMENDMENT

# 8

OFFERED IN THE HOUSE

BY REPRESENTATIVE NORDLUND

TO: CSHB 167( ) (Draft 8-LS0492K)

Page 2, line 26:

Delete "demonstrate that"

Insert "consider whether"

Page 3, line 19:

Delete "AS 46.14.010(b)(2)"

Insert "AS 46.14.010(b)"

Delete "findings that the factors"

Page 3, lines 20 - 21:

Delete all material.

# Alaska Forest Association, Inc.



111 STEDMAN SUITE 200  
KETCHIKAN, ALASKA 99901-6599  
Phone 907-225-6114  
FAX 907-225-6920

April 5, 1993

Representative Brian Porter, Chairman  
House Judiciary Committee  
State Capitol  
Juneau, Alaska 99801-1182

Dear Representative Porter,

On behalf of the Alaska Forest Association, I submit this letter of support for the Committee Substitute for House Bill 167.

A great deal of hard work has been put into this very complicated bill to get it to the product you have before you today. The Association would like to compliment the Air Quality Advisory Committee, the Senate Resources sub-committee, Tom Chapple from DEC, Representative Hanley and many others who have worked in a cooperative effort to craft this legislation.

Although 95% of the bill is supported by all parties, there are a few areas where disagreement still exists. One of those areas is duration of operating permits. Some feel it should be left to DEC's discretion, others feel it should be a 3 or 5 year permit. This bill provides for a 5-year permit duration as provided in Federal Law.

We are in full support of the 5 year period. The primary reason for wanting the longer period is the expense of permitting. It has been industry's experience that work to renew a permit often has to begin before the earlier permit has been issued. A shorter cycle could mean that industry would be in a constant permitting mode.

Regarding the ability for DEC to go beyond federal standards we support a process that would subject the more stringent standards to a scientific peer review. Although our original thought was not to go beyond federal standards at all -- we do recognize that there may be situations where it may be warranted.

Again, the Alaska Forest Association supports the Committee Substitute for House Bill 167 and urge it's passage.

Sincerely,

Bud Stewart  
Alaska Forest Association President



Department of Environmental Conservation

# Position Paper

Bill No: CSHB 167 (Jud)

Approved: \_\_\_\_\_

Name: John A. Sandor

Title: Commissioner

Date: April 2, 1992

Bill Title: Air Quality

*CSHB 167 (Jud) as proposed reflects the diligent efforts of many individuals in the public and private sectors representing the concerns of a large number of the groups who will be affected by this legislation.*

*Although some may contend that there is no overall benefit to be achieved, it is of the utmost importance to retain state jurisdiction of air quality control, not because the department desires more regulatory programs, but because to take no action will have severe consequences for all Alaskans. The federal Clean Air Act was designed by Congress to be administered by the states, and thus many flexibilities have been built in which are specifically not allowed to EPA. In addition, the Act has specific time certain actions that must occur; missing those deadlines will result in the withdrawal of federal highway grants funds and the imposition of federal control of air quality permits.*

*Federal preemption of permits will disenfranchise the state from being responsive to the needs of our citizens, businesses, and industries. The cost of federal permits will be higher to the regulated community and time delays will be common. If the state retains jurisdiction, the department can continue to serve a role in assuring that new federal regulations, mandated by the Act, are responsive to and considerate of Alaskan conditions, to the greatest degree afforded under the federal laws.*

*The department is encouraged by the manner in which this bill has been developed - both prior to the start of the legislative session and after - with the work of the Senate Resources Subcommittee and the sponsor of HB 167. The bill as proposed is a very workable product for the agency to implement, and with which industry can comply. It provides a clear policy direction from the Legislature regarding the design features and principal mechanisms for issuing air permits in an efficient and cost effective manner while maintaining public health goals.*

*The department endorses the proposed CSHB 167 (Jud) and respectfully requests the Legislature enact this or similar legislation this session.*

**For further information contact: Janice Adair, Assistant Commissioner/Legislative Liaison at 465-5010 or Tom Chapple, Project Manager at 465-5100**

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Representative Kay Brown

February 18, 1993

Page 2

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More importantly, the federal regulations implementing 42 U.S.C. 7661a(b)(6) come to the same conclusion. In 40 C.F.R. 70.4(b)(3)(x), the regulations specify that the initial program submittal of a state seeking federal approval must contain a legal opinion demonstrating that the state's air quality program

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Representative Kay Brown  
February 18, 1993  
Page 3

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In conclusion, because the terms "private" and "substantive" are not clear and, as words of limitation, would not comply with the federal Clean Air Act's requirement in 42 U.S.C. 7661a(b)(6), I recommend their deletion from AS 46.03.163.

-----

I have enclosed a copy of the federal regulation cited in this memo. Please let me know if I can be of other assistance.

TML:gc  
93-137.glc

Enclosure

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<sup>1/</sup> See, State v. Lewis, 559 P.2d 630, 635 (Alaska 1977), cert. den. 432 U.S. 901 (1977); Johns v. Commercial Fisheries Entry Commission, 699 P.2d 334 (Alaska 1985); and State v. Enserch Alaska Const., Inc., 787 P.2d 624, 629 - 630 (Alaska 1989).

Interested Parties

March 4, 1993

465-3600

A brief review of  
"Standing" in the context  
of AS 46.03.163.

Robert Reges, AAG 

All three Air Quality bills provide an opportunity for judicial review to persons who did not participate in the public comment process but who have a "private, substantive, legally protected interest" that is impacted by the challenged decision. Many persons have asked what is meant by "private, substantive, legally protected interest". This paper explores the concepts embodied in those words.

The federal Clean Air Act requires that Alaska provide judicial review of a permit action to "any person who could obtain judicial review of that action under applicable law."<sup>1</sup> EPA has interpreted the phrase "applicable law" to include state law.<sup>2</sup> Accordingly, federal regulations require that every state program provide judicial review to "any person who could obtain review of such action under State laws."<sup>3</sup>

Accepting EPA's interpretation of the statutory term "applicable law", the question is: who can obtain judicial review of permit actions under Alaska "laws"? The answer is, "anyone with 'standing'". In Alaska, "standing" is neither a statutory law nor a constitutional doctrine. Rather, it is a rule of judicial self-restraint developed by the courts. State v. Enserch Alaska Construction Inc., 787 P.2d 624, 629 (Alaska 1989). The doctrine has been developed by courts in their written opinions. Those are the only "state laws" on this topic.

The judicial opinions tell us that the doctrine of standing is based on the principle that courts should not resolve abstract questions or issue advisory opinions. Enserch, supra at 629. An interest that merely calls for an advisory opinion is not "legally protected."

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<sup>1</sup> Clean Air Act § 502(b)(6).

<sup>2</sup> See the preamble to 40 CFR Part 70. 57 Fed. Reg. 32250 (July 21, 1992), Section III. Summary of Final Rules; E. Permit Issuance and Review; 3. Judicial review and Public Petition.

<sup>3</sup> 40 CFR 70.4(b)(3)(x).

These opinions also recognize two types of standing. One recognized type is known as "citizen-taxpayer" standing. A person (the plaintiff) has "citizen-taxpayer" standing only if the plaintiff has raised a question of public significance which directly affects the plaintiff. That is, the plaintiff's interest must be "private." Alaska's courts have also recognized "interest-injury" standing. Interest-injury standing is bestowed upon a plaintiff who has an interest adversely affected by the conduct complained of. Enserch, supra at 630. Again, this is another way of saying that standing is bestowed upon a person who has a "private" interest.

One could argue that, under present law, an interest need not be "substantive." Justice Matthews has stated that "an identifiable trifle is enough for standing to fight out a question of principle." Trustees for Alaska v. State, 726 P.2d 324, 327 (Alaska 1987). Nonetheless, in that same opinion Justice Matthews spoke of "sufficient interest" and of an instance where standing was denied because the matter at issue was not "significant." Id. at 328-329. He concluded by noting that "taxpayer-citizen standing cannot be claimed in all cases as a matter of right."

We would be splitting hairs to argue that the word "significant" is more or less inclusive than "substantive". It appears to this writer that the two are simply different ways of saying the same thing. In sum, Alaskan judges have not specifically used the words "private, substantive and legally protected" but they have iterated maxims that sound synonomous.

Federal courts, on the other hand, have used those exact words. The federal concept of standing is predicated upon article III, § 2 of the United States Constitution. Federal courts, which are "article III courts", cannot exercise jurisdiction over a case unless it involves justiciable "controversy". Federal judges have interpreted this to mean that they do not have jurisdiction unless the plaintiff shows that the conduct complained of "invades or will invade a private substantive legally protected interest of that plaintiff citizen." Associated Industries of New York State, Inc. v. Ickes, 134 F.2d 694, 700 (2nd Cir. 1943), vacated for mootness by Ickes v. Associated Industries of N.Y., 320 U.S. 707, 4 S.Ct. 74, 88 L.Ed. 414 (1943).

In the federal regime, a "private" interest is one in which the plaintiff has a "personal stake and interest that imparts concrete adverseness". Barlow v. Collins, 397 U.S. 159, 164, 90 S.Ct. 832, 25 L.Ed.2d 192 (1970). To establish that a claim is "substantive", a plaintiff must show that the challenged action has caused him injury-in-fact. Association of Data Processing Service Organizations v. Camp, 397 U.S. 150, 152, 90 S.Ct. 827, 25 L.Ed.2d 184 (1970). Finally, the plaintiff must show that there is a legitimate "case" or "controversy"; which is to say that his

interest must be legally protected. Id. One could also say that a "legally protected interest" is demonstrated if the plaintiff shows that he was within the zone of interests to be protected by the statute or constitutional guarantee in question. Barlow v. Collins, supra. at 164.

Having examined the state and federal caselaw it is obvious that they use different terms to describe standing. But, it is equally obvious that both employ the same concept. The question is whether the person seeking judicial review is a proper party to request an adjudication of a particular issue. Trustees, supra. at 327. This is an evolving concept. Courts had taken an expansive view of "proper parties" during the 1970's, See United States v. Students Challenging Regulatory Agency Procedures (SCRAP), 412 U.S. 669, 93 S.Ct. 2405, 37 L.Ed.2d 254 (1973). The recent trend is to more narrowly define "standing". See Lujan v. National Wildlife Federation, 497 U.S.871, 110 S.Ct. 3177, 111 L.Ed.2d 695 (1990); Air Courier Conference of America v. American Postal Workers Union, AFL-CIO, 498 U.S. 517, 111 S.Ct. 913, 112 L.Ed.2d 1125 (1991). In any event, it seems clear to this lawyer that every permutation of "standing" is simply a variation on a theme: standing is bestowed upon a person with a private, substantive, legally protected interest. For that reason, I submit that proposed Clean Air Bills do provide judicial review to any person who could obtain it under applicable law.

# **NFIB** Alaska

National Federation of  
Independent Business

POSITION PAPER

OF

NATIONAL FEDERATION OF INDEPENDENT BUSINESS  
(NFIB/ALASKA)

ON

CLEAN AIR LEGISLATION

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. ON BEHALF OF OUR 5,000 MEMBERS, I WOULD LIKE TO THANK YOU FOR THE OPPORTUNITY TO COMMENT ON THE CLEAN AIR BILL.

FOR SOME BACKGROUND INFORMATION: NFIB/ALASKA IS COMPRISED OF 5,000 SMALL AND INDEPENDENT BUSINESS OWNERS. THE LEGISLATIVE AGENDA OF NFIB/ALASKA IS DETERMINED BY OUR BALLOT. THE BALLOT IS OUR ANNUAL POLL OF OUR MEMBERSHIP ON A SERIES OF ISSUES DEEMED CRITICAL TO SMALL BUSINESS. A MAJORITY VOTE, OF THE MEMBERS IN RESPONSE TO THE POLL, SETS OUR POLICY AND POSITION ON LEGISLATIVE ISSUES.

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

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

61% YES                      33% NO                      6% UNDECIDED

IN OCTOBER 1992 THE GOVERNOR APPOINTED A TASK FORCE ON REGULATORY REFORM. THEIR CHARGE WAS TO REVIEW STATE REGULATIONS THAT INHIBIT ECONOMIC OPPORTUNITY AND PRODUCTIVITY AND TO PROPOSE CHANGES TO THOSE REGULATIONS. PUBLIC TESTIMONY WAS TAKEN AT FOUR MEETINGS. THEIR FINAL REPORT WAS RELEASED ON MARCH 19. ATTACHED IS A PORTION OF THEIR RECOMMENDATIONS.

THEIR RECOMMENDATION NUMBER GP 1 STATES:

"NO STATE REGULATION MAY EXCEED STANDARDS ESTABLISHED BY FEDERAL STATUTE OR REGULATION."

"WHEN THE INTERESTS OF ALASKA CALL FOR A HIGHER OR GREATER STANDARDS THAN THAT CONTAINED IN FEDERAL LAW OR REGULATIONS, THAT DETERMINATION MUST BE MADE BY THE ALASKA LEGISLATURE THROUGH STATUTE."

WE WANT TO MAKE SURE THERE IS LANGUAGE IN ANY CLEAN AIR BILL TO RESTRICT THE DEPARTMENT TO THE FEDERAL STANDARDS.

WE ARE HAPPY TO SEE THE INCORPORATION OF THE SMALL BUSINESS ASSISTANCE PROGRAM AND COMPLIANCE (ADVISORY PANEL. HOPEFULLY, THESE PROGRAMS WILL PROVIDE HELP FOR SMALL BUSINESSES TO COMPLY WITH THE NEW REQUIREMENTS.

THANK YOU FOR THE OPPORTUNITY TO COMMENT ON THIS VERY IMPORTANT ISSUE.

Attachment

## GENERAL PRINCIPLES

In widely divergent industries and businesses, centralizing themes emerged, which revealed basic flaws in the underlying foundations of the regulatory drafting process, or in the administrative process itself. These led to broad, general recommendations which, if adopted, could lead to rectification of a wide spectrum of regulations that currently are "bad servants" of Alaskans, and to the promulgation, in the future, of regulations that will work well.

### **ADMINISTRATIVE PROCEDURES ACT : AS 44.62**

The Task Force developed six recommendations for changes to the Administrative Procedures Act, the statute which determines how regulations shall be prepared. These recommendations restore policy decisions to the Legislature, call for the proper role of science, and seek to remove barriers to efficiency while requiring that attention be paid to costs and benefits.

#### **GP 1. No State regulation may exceed standards established by federal statute or regulation.**

*When the interests of Alaska call for a higher or greater standards than that contained in federal law or regulations, that determination must be made by the Alaska Legislature through statute.*

#### **GP 2.** State regulations must set specific performance standards, and cannot call for "state of the art" technology as a standard to be met for compliance.

*When specific performance standards are cited, a business can obtain the necessary equipment and procedure, and meet the standard, thereafter having minimal ongoing expenses in maintenance of the equipment. Capital costs are one-time. When "state of the art" is specified, capital costs are constant at each minuscule change, and can ultimately cause a business to close.*

#### **GP 3.** State regulations calling for specific scientifically measurable performance standards must have survived scientific peer review.

*This statutory change is necessary to prevent the addition, and cause the elimination of, performance standards in regulations that are unsupported and unsupportable by scientific data. Had such a statutory requirement been in place on the federal level, Congress would not have passed the Acid Rain legislation a month after federal scientists reported that acid rain did not in fact exist and was not a product of the industrial revolution.*

**FINAL REPORT**  
**OF THE**  
**GOVERNOR'S TASK FORCE**  
**ON**  
**REGULATORY REFORM**

**MARCH 19, 1993**

## FOREWARD

The Task Force on Regulatory Reform was appointed by Governor Walter J. Hickel October 1, 1992. The charge was:

"...to review state regulations that inhibit economic opportunity and productivity and to propose changes to those regulations."

Finalized recommendations were to be provided by the middle of the 1993 legislative sessions.

Task Force members are:

**Bonnie Williams, Chair.** Director of Advance College Tuition program, University of Alaska statewide system. Fairbanks.

**Charlie Boddy.** Government Relations Vice President of Usibelli Coal Mine, Inc., responsible for federal and state permitting, regulatory compliance.

**Ed Bostrom.** Farmer, North Pole-Salcha.

**Craig Ingham.** President of Mt. McKinley Bank, Fairbanks. Formerly Vice President, then involved with federal and state regulatory compliance.

**Sandra Jacques.** Chiropractor and partner, big game guides, Anchorage.

**Gloria McCutcheon.** President of Alaska Fish and Farm wholesale food distributorship, Anchorage.

**Representative Carl Moses.** Unalaska.

**Ronald Ricketts.** Executive Director of Fairbanks Industrial Development Corporation, attorney.

**Senator Bert Sharp.** Fairbanks.

**Wayne Stevens.** Kodiak Chamber of Commerce.

**Kathleen A. Weeks.** Attorney in Anchorage, specialist in private property rights.

**James J. Haselberger, ex officio.** Representing the Governor's Office.

Support staff included M. Susan Logue and Nanette Woodman of the Fairbanks Governor's Office.

# STATE OF ALASKA

## DEPARTMENT OF LAW

### CRIMINAL DIVISION

WALTER J. HICKEL, GOVERNOR

PLEASE REPLY TO:

CRIMINAL DIVISION CENTRAL OFFICE  
P. O. BOX 110300 - STATE CAPITOL  
JUNEAU, ALASKA 99811-0300  
PHONE: (907) 465-3428

OFFICE OF SPECIAL PROSECUTIONS  
AND APPEALS  
1031 W. 4TH AVENUE, SUITE 318  
ANCHORAGE, ALASKA 99501-5993  
PHONE: (907) 279-7424

February 10, 1993

Tom Chapple, Chairman  
Air Quality Legislative Drafting Committee  
Department of Environmental Conservation  
410 Willoughby Avenue, Suite 105  
State of Alaska  
Juneau, Alaska 99801-1795

Re: HB 39, SB 103 (Air Quality Control)

Dear Mr. Chapple:

I have reviewed the above-referenced bills on behalf of the Criminal Division of the Department of Law. We have several comments and suggestions, as follows:

1. Section 13 proposes adding a new statute, AS 46.03.791, subparagraph (a)(2) of which would penalize a person who "falsifies, disables, or fails to install a monitoring device . . . ." We have difficulties in envisioning how a person might falsify a monitoring device. We suggest that the statute instead read: "tamper[s] with, disables, or fails to install a monitoring device . . . ."

2. We suggest that proposed new AS 46.03.791(c) be amended to delete the second "recklessly." It should be sufficient that the defendant recklessly released or caused to be released the pollutant and thereby placed another person in imminent danger.

3. We suggest that proposed new AS 46.03.791(f) be amended to read: "It is an affirmative defense to a prosecution under sections (b), (c), and (d) that the conduct charged was freely consented to . . . ." In short, we do not believe that this affirmative defense is meant to be or should be available to prosecutions under section (a).

4. We suggest that proposed new AS 46.03.791(g) be amended to refer to "a representative or employee" of the person, rather than to "a responsible corporate official or other official who, with apparent or actual authority, represents the person." We do not believe it is appropriate for the parties to be forced to litigate whether the representative or employee was a "responsible corporate official or other official." Our proposed amendment would eliminate that problem.

5. Finally, we suggest that the definition of "knowingly" be limited to "the meaning given in AS 11.81.900(a)," and that the remaining parts of this subsection be deleted. The effect of the additional language is twofold. First, it requires proof of actual knowledge, when existing law only requires proof that the defendant "knew or should have known." The latter is considerably easier to establish beyond a reasonable doubt. Second, (h)(i)(2)(B) serves to insulate business organizations from any possible criminal liability. Knowledge can only be imputed to organizations. By disallowing any such attribution, it would be impossible to ever charge an organization. This means that only the individual officers or employees could be prosecuted. There is no apparent reason for treating organizations this differently for purposes of this bill. The existing definition of "knowingly" set out in AS 11.81.900(a) has to date proven effective in safeguarding the rights of defendants. We do not have any information suggesting that a different provision is appropriate in these circumstances.

If you have any questions or comments, please do not hesitate to contact me. I appreciate the opportunity to comment on this bill.

Very truly yours,

CHARLES E. COLE  
ATTORNEY GENERAL

By: Margot O. Knuth  
Margot O. Knuth  
Assistant Attorney General

cc: Robert Reges  
Assistant Attorney General

Lee Ann Degrazia  
Assistant Attorney General



***Representative Mark Hanley***  
***Alaska State Legislature***

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Memorandum

From: Representative Mark Hanley *MH*  
To: Representative Brian Porter  
Re: House Bill 167 "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 inspection and enforcement powers of the Department of Environmental Conservation; and providing for an effective date.

This memo is to respectfully request a hearing for the above mentioned legislation at your earliest possible convenience.

House Bill 167 is necessary to comply with the federal Clean Air Act which requires the State of Alaska to have a federally approved air quality program on the books by November 15, 1993, or risk the loss of its federal highway and air pollution funds -- over \$200 million per year.

In addition, if the state doesn't have a federally approved air quality program in place by November, the federal government will take over the permitting program. All interested parties agree that Alaska must be in control of this federal program and be able to manage it here by state, rather than by federal EPA officials.

HB 167 is a product of the work of representatives from various different factions of industry, the environmental community and the Department of Environmental Conservation.

Attached is a sectional analysis and background material on HB 167 for your information.

Your prompt attention to this matter would be greatly appreciated.

**DIVISION OF LEGAL SERVICES**


**LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA**

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

130 Seward Street, Suite 409  
Juneau, Alaska 99801-2105

**MEMORANDUM**

April 1, 1993

**SUBJECT:** Air Quality Control Program (CSHB 167( ))  
**TO:** Representative Mark Hanley  
**FROM:** Terri Lauterbach  
Legislative Counsel 

Enclosed is the draft CS you requested for HB 167 yesterday afternoon. It is based on the "O" version of CSSB 103( ), plus several changes submitted by your staff.

In AS 46.14.010(b)(4) of the new material submitted, there was a reference to AS 46.14.140(c). I believe that reference is erroneous, so I have changed it to AS 46.14.120(e). Please let me know if that substitution is incorrect.

In AS 46.14.010(c)(1) of the new material submitted, there appeared an ambiguous phrase: "exposure profiles and meteorological conditions or source characteristics." I have clarified the ambiguity by using the phrase "exposure profiles and either meteorological conditions or source characteristics" but I'm just guessing. Perhaps the phrase should be "either exposure profiles and meteorological conditions or source characteristics." Please let me know if you need this changed.

AS 46.14.010(c)'s requirements do not fit all of the types of regulations listed in AS 46.14.010(b). Therefore, I have changed the reference in AS 46.14.010(c) from "(b) of this section" to "(b)(2) of this section." I have also made the same change in AS 46.14.015(a). The committee should review these sections carefully.

In AS 46.14.160(c), I have added a reference to AS 46.14.275. I could not use this reference in earlier versions of CSSB 103( ) because AS 46.14.275 had not yet been added to the draft. Now that AS 46.14.275 is in this draft, I believe the addition of a reference to it in AS 46.14.160(c) is appropriate. Please let me know if I am in error on this.

When you are ready for further assistance, let me know.

TML:pl  
93-266.plm  
Enclosure

8-LS0492J  
Lauterbach  
4/1/93

CS FOR HOUSE BILL NO. 167( )  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
EIGHTEENTH LEGISLATURE - FIRST SESSION

BY

Offered:  
Referred:

Sponsor(s): REPRESENTATIVE HANLEY

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to air quality control and the prevention, abatement, and  
2 control of air pollution; amending the lien provisions relating to the oil and  
3 hazardous substance release response fund; relating to inspection and enforcement  
4 powers of the Department of Environmental Conservation; and providing for an  
5 effective date."

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

7 \* Section 1. POLICY AND PURPOSES. (a) It is the policy of the state to have a  
8 program to prevent, abate, control, and identify air pollution that complies with 42 U.S.C.  
9 7401 - 7671q (Clean Air Act), as amended, and federal regulations adopted under those laws.

10 (b) Changes in state law are necessary to allow the state to continue to have primary  
11 management of air quality in the state and to retain federal approval of the state's air quality  
12 control program in order to ensure the continued receipt of federal highway and air pollution  
13 control money. The federal Environmental Protection Agency must prohibit the approval of

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

3 (c) It is the intent of the legislature to comply with 42 U.S.C. 7401 - 7671q (Clean  
4 Air Act) in a manner that meets the federal requirements, allows efficient and cost effective  
5 processing of permits, requires accountability from the Department of Environmental  
6 Conservation on matters relating to recovery of program costs, and ensures the productivity  
7 of the state's businesses while protecting the health and welfare of the state's residents.

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

9 CHAPTER 14. AIR QUALITY CONTROL.

10 ARTICLE 1. GENERAL REGULATIONS AND CLASSIFICATIONS.

11 Sec. 46.14.010. EMISSION CONTROL REGULATIONS. (a) After public  
12 hearing, the department may adopt regulations under this chapter establishing ambient  
13 air quality standards, emission standards, or exemptions that are necessary to  
14 implement a state air quality control program required under 42 U.S.C. 7401 - 7671q  
15 (Clean Air Act), as amended. The standards established under this section may be for  
16 the state as a whole or may vary in recognition of local conditions.

17 (b) The department may adopt the following types of regulations only after  
18 public hearing and compliance with AS 46.14.015:

19 (1) a regulation that establishes an ambient air quality standard for an  
20 air contaminant for which there is no corresponding federal standard;

21 (2) a regulation that establishes an ambient air quality standard or  
22 emission standard that is more stringent than a corresponding federal standard;

23 (3) a regulation that establishes an equivalent emission limitation for  
24 a hazardous air contaminant for which there is no corresponding maximum achievable  
25 control technology standard; or

26 (4) a regulation that regulates emissions from a source or facility under  
27 the authority of AS 46.14.120(e), 46.14.130(a)(3)(B), or 46.14.130(b)(4)(B).

28 (c) Before adopting a regulation described under (b)(2) of this section, the  
29 department shall demonstrate that

30 (1) exposure profiles and either meteorological conditions or source  
31 characteristics are significantly different in the state or in an area of the state from

1 those upon which a federal regulation is based;

2 (2) the conditions, characteristics, and exposure profiles reasonably  
3 require a more stringent ambient air quality standard or emission standard to protect  
4 human health and welfare or the environment; and

5 (3) the proposed standards are technologically and economically  
6 feasible.

7 (d) When incorporated into a permit, emission standards and limitations,  
8 emissions monitoring and reporting requirements, and compliance verification  
9 requirements that are generally applicable statewide or are generally applicable to  
10 individual source or facility types shall be adopted in regulation unless they have been  
11 requested by the owner and operator to whom the permit is issued.

12 (e) An emission standard adopted by the department may be applicable to  
13 individual sources within a facility or to all sources within a facility. For purposes of  
14 determining compliance with applicable regulations and with permit limitations, the  
15 department may allow numerical averaging of the emissions of each air contaminant  
16 from several sources within a facility if

17 (1) requested by the owner and operator; and

18 (2) allowed under 42 U.S.C. 7401 - 7671q (Clean Air Act), as  
19 amended, and regulations adopted under those sections.

20 Sec. 46.14.015. SPECIAL PROCEDURE FOR MORE STRINGENT  
21 REGULATIONS. (a) Before adopting a regulation described under  
22 AS 46.14.010(b)(2), the department shall publish written findings that the factors  
23 required under AS 46.14.010(c) have been demonstrated. Before adopting a regulation  
24 described under AS 46.14.010(b)(1) or (3) - (4), the department shall publish written  
25 findings justifying the regulations.

26 (b) The department shall submit its findings, the studies on which the findings  
27 are based, and other related data for peer review to a minimum of three separate  
28 parties who are not employees of the department and who are determined by the  
29 commissioner to be technically qualified in the subject matter under review. The  
30 commissioner shall ensure that the peer review includes an analysis of the factors  
31 considered by the commissioner to support the standards proposed to be adopted and

1 recommendations, if any, for additional research or investigation considered  
2 appropriate. Peer review reports shall be submitted to the commissioner within 45  
3 days after the department submits a matter for peer review unless the commissioner  
4 determines that additional time is required.

5 (c) The department shall make available to the public at least 30 days before  
6 the public hearing required under AS 46.14.010(b), at convenient locations, copies of  
7 the department's proposed regulation, the findings of the department describing the  
8 basis for adoption of the regulation, and the peer review reports submitted under (b)  
9 of this section.

10 (d) The department shall contract with persons to perform peer review under  
11 this section. All persons selected shall be selected on the basis of competitive sealed  
12 proposals under AS 36.30.200 - 36.30.270 (State Procurement Code).

13 Sec. 46.14.020. CLASSIFICATION OF FACILITIES OR SOURCES;  
14 REPORTING. (a) The department, by regulation, may classify facilities or sources  
15 that, in the department's determination, are likely to cause or contribute to air  
16 pollution, according to the levels and types of emissions and other characteristics that  
17 relate to air quality. The department may make a classification under this subsection  
18 applicable to the state as a whole or to a designated area of the state. The department  
19 shall base the classifications on consideration of health, economic, and social factors,  
20 sensitivity of the receiving environment, and physical effects on property.

21 (b) The department or a local air quality control program authorized under  
22 AS 46.14.400 may require an owner and operator of a facility or source classified  
23 under this section to report information to the department or the authorized local  
24 program concerning location, size, and height of contaminant outlets or area sources,  
25 processes employed, fuels used, the nature and time periods or duration of emissions,  
26 and other information relevant to air quality that is available or reasonably capable of  
27 being calculated and compiled.

28 Sec. 46.14.030. STATE AIR QUALITY PLAN. The department shall act for  
29 the state in any negotiations relative to the state air quality control plan developed  
30 under 42 U.S.C. 7401 - 7671q (Clean Air Act), as amended. The department may  
31 adopt regulations necessary to implement the state plan.

## 1 ARTICLE 2. EMISSION CONTROL PERMIT PROGRAM.

## 2 Sec. 46.14.110. ADDITIONAL CONTAMINANT CONTROL MEASURES.

3 (a) The department may require that notice be given to it before the undertaking of  
4 the construction, installation, or establishment of particular types or classes of new air  
5 contaminant sources specified in its regulations. Within 15 days of its receipt of the  
6 notice, the department shall require, as a condition precedent to the undertaking, the  
7 submission of plans and other information it considers necessary in order to determine  
8 whether the proposed undertaking will be in accord with applicable regulations in force  
9 under this chapter.

10 (b) Within 30 days of receipt of the plans and information for a proposed  
11 undertaking, the department shall either approve the undertaking and issue a permit,  
12 or if the department determines that the proposed undertaking will not meet the  
13 requirements of this chapter and applicable regulations, it shall issue a prohibition  
14 order against the undertaking.

15 (c) A person subject to a prohibition order as prescribed in (b) of this section,  
16 upon written request in accordance with regulations of the department, is entitled to  
17 a hearing on the order. Following the hearing the order may be affirmed, modified,  
18 or withdrawn.

19 (d) For the purposes of this chapter, addition to or enlargement or replacement  
20 of an air contaminant source, or a major alteration of one, shall be construed as an  
21 undertaking for the construction, installation, or establishment of a new air contaminant  
22 source.

23 (e) Features, machines, and devices constituting parts of or called for by plans  
24 or other information submitted under (a) of this section shall be maintained in good  
25 working order.

26 (f) This section does not authorize the department to require the use of  
27 machinery, devices, or equipment from a particular supplier or produced by a particular  
28 manufacturer if the required performance standards may be met by machinery, devices,  
29 or equipment available from other sources.

30 (g) The absence of or the department's failure to adopt or issue a regulation  
31 or order under this section does not relieve a person from compliance with emission

1 control requirements or other provisions of law.

2 (h) The department may require the payment of a reasonable fee for the review  
3 of plans and information required to be submitted. A fee for a single review may not  
4 exceed \$25.

5 Sec. 46.14.120. PERMITS FOR CONSTRUCTION, MODIFICATION, OR  
6 OPERATION. (a) Before constructing, installing, modifying, reconstructing, or  
7 establishing a facility subject to AS 46.14.130(a), the owner and operator shall obtain  
8 a construction permit under this chapter.

9 (b) Except when considered to be in compliance with this chapter under a  
10 regulation adopted under AS 46.14.140(a)(11) or 46.14.220(c), the owner and operator  
11 shall obtain an operating permit under this chapter before operating a facility subject  
12 to AS 46.14.130(b).

13 (c) A permittee shall comply with the terms and conditions of a permit or a  
14 modifying compliance order issued by the department under this chapter or a court  
15 order. A person operating under the application shield available under  
16 AS 46.14.140(a)(11), shall comply with the terms and conditions of the pending  
17 application and applicable regulations.

18 (d) The department shall ensure that permits issued, modified, amended,  
19 renewed, or revoked and reissued under this chapter comply with all applicable federal,  
20 state, and local requirements.

21 (e) If the federal administrator exempts a source from the requirements of  
22 42 U.S.C. 7661a(a) (Clean Air Act, sec.502(a)), the commissioner, by regulation, shall  
23 consider the factors used by the administrator in reaching that determination and shall  
24 issue a similar determination unless public health or air quality effects provide a  
25 reasonable basis to regulate the source.

26 Sec. 46.14.130. FACILITIES REQUIRING PERMITS. (a) Before  
27 constructing, installing, modifying, reconstructing, or establishing a facility, the owner  
28 and operator shall obtain a construction permit from the department if the facility is  
29 any one of the following:

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

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

3 (3) a new facility of a type classified under AS 46.14.020

4 (A) as having the potential to violate the ambient air quality  
5 standards; or

6 (B) under a finding by the department that public health or air  
7 quality effects provide a reasonable basis to regulate the source;

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

11 (5) an existing facility for which

12 (A) a modification is proposed that would increase actual  
13 emissions of an air contaminant by an amount equal to or greater than the  
14 emission quantity set out in regulations adopted under AS 46.14.010,  
15 46.14.020, or 46.14.140; or

16 (B) reconstruction is proposed.

17 (b) The owner and operator of a facility shall obtain an operating permit from  
18 the department if the facility is a facility subject to (a) of this section or a facility that

19 (1) emits or has the potential to emit 100 TPY or more of a regulated  
20 contaminant;

21 (2) emits or has the potential to emit 10 TPY or more of a hazardous  
22 air contaminant or 25 TPY or more, in the aggregate, of two or more hazardous air  
23 contaminants;

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

28 (4) contains another stationary source designated by

29 (A) the federal administrator by regulation; or

30 (B) the department under a finding that public health or air  
31 quality effects provide a reasonable basis to regulate the source.

1           Sec. 46.14.140.       EMISSION CONTROL PERMIT PROGRAM  
2 REGULATIONS. (a) The department shall adopt regulations to address all  
3 substantive and procedural elements of the emission control permit program established  
4 under this chapter that are not addressed in statute, except elements that relate only to  
5 the internal management of the department and do not affect the public or govern the  
6 way the department deals with the public. The regulations must be reasonable and  
7 adequate, and provide flexibility in the operation of a facility consistent with 42 U.S.C.  
8 7401 - 7671q (Clean Air Act), as amended, and applicable federal regulations. The  
9 regulations must include

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

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

15                       (3) procedures for

16                               (A) specifying when permit applications and renewal requests  
17 are to be submitted;

18                               (B) specifying the time duration for department review of permit  
19 applications;

20                               (C) processing and reviewing an application;

21                               (D) providing public notice, including opportunity for public  
22 comment and hearing; and

23                               (E) issuing permits, including procedures for issuing permits for  
24 temporary operations or open burn activities;

25                       (4) reasonable standard permit conditions, including conditions for

26                               (A) emission standards and limitations;

27                               (B) monitoring, record keeping, and reporting for facilities  
28 subject to AS 46.14.130;

29                               (C) inspection and entry;

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

- 1 (E) annual certification of compliance;
- 2 (F) excess emission or process deviation reporting; and
- 3 (G) equipment malfunctions and emergencies;
- 4 (5) fees and procedures for collecting fees;
- 5 (6) provisions addressing late payment or nonpayment of fees, which
- 6 may include assessment of penalties and interest or refusal to issue, amend, modify,
- 7 or renew an air quality control permit;
- 8 (7) the duration of permits;
- 9 (8) procedures for modifying or amending a permit that provide
- 10 flexibility in the operation of the facility, including procedures to allow changes to a
- 11 permitted facility without requiring a permit modification, consistent with the purposes
- 12 of this chapter and with 42 U.S.C. 7401 - 7671q (Clean Air Act);
- 13 (9) reasonable provisions for renewing, reopening, revoking and
- 14 reissuing, and terminating a permit consistent with the purposes of this chapter and 42
- 15 U.S.C. 7401 - 7671q (Clean Air Act);
- 16 (10) provisions allowing for physical or operational limitations that will
- 17 reduce a facility's emissions to levels below those that would make the facility subject
- 18 to part or all of AS 46.14.120 and 46.14.130;
- 19 (11) provisions authorizing facility operation while a permit application
- 20 is pending, consistent with 42 U.S.C. 7661b(d) (Clean Air Act, sec. 503(d));
- 21 (12) provisions for ensuring that compliance with an operating permit
- 22 issued under this chapter will be considered to be compliance with 42 U.S.C. 7661a
- 23 (Clean Air Act, sec. 502) and other provisions of state or federal law specifically
- 24 provided for by the department consistent with 42 U.S.C. 7401 - 7671q (Clean Air
- 25 Act) and regulations adopted under state and federal law; and
- 26 (13) provisions allowing for certification of inspectors who evaluate
- 27 compliance with the terms and conditions of a permit, order, regulation, or other
- 28 provision of law authorized under this chapter.
- 29 (b) A permit issued under this chapter may not require a person to use
- 30 (1) machinery, devices, or equipment of a particular type, from a
- 31 particular supplier, or produced by a particular manufacturer; or

1 (2) specific methods, processes, procedures, or designs for the  
2 management and operation of a facility regulated under this chapter except to the  
3 extent that the federal administrator has

4 (A) adopted a design, equipment work practice, or operational  
5 standard under 42 U.S.C. 7412(h), as amended, for the control of a hazardous  
6 air pollutant; or

7 (B) approved an alternative hazardous air pollutant standard  
8 under 42 U.S.C. 7412(h)(3), as amended.

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

12 Sec. 46.14.150. TIME FOR SUBMISSION OF OPERATING PERMIT  
13 APPLICATIONS. (a) The owner and operator of a facility required to have an  
14 operating permit under this chapter shall submit the required application and  
15 monitoring, reporting, and quality assurance plan no later than (1) 12 months after the  
16 date on which the facility becomes subject to AS 46.14.120(b); or (2) 60 days before  
17 beginning construction of a source if the facility containing the source is a new facility  
18 that is not required to obtain a construction permit under AS 46.14.130(a), whichever  
19 is earlier.

20 (b) The department may accept and begin processing applications filed earlier  
21 than the submission date. Applications filed earlier may be given priority for permit  
22 issuance.

23 Sec. 46.14.160. COMPLETENESS DETERMINATION. (a) The department  
24 shall review every application submitted under this chapter for completeness. To be  
25 determined complete, an application must provide the information identified by the  
26 department in regulations adopted under AS 46.14.140 and in standard application  
27 forms provided by the department under AS 46.14.140(a)(1) and must be certified true  
28 and correct by the owner and operator.

29 (b) The department shall notify the applicant in writing whether the application  
30 is complete. Unless the department notifies the applicant within 60 days of receipt of  
31 an application that the application is incomplete, the application is considered to be

1 complete.

2 (c) If, during the processing of an application after it has been determined or  
3 considered to be complete, the department finds that additional information is  
4 necessary to evaluate or take action on that application, the information may be  
5 requested in writing from the owner and operator. A request for information under  
6 this subsection does not render the application incomplete. However, notwithstanding  
7 AS 46.14.275, an owner and operator may be found in violation of this chapter for  
8 operating without a valid permit if their failure to provide timely additional  
9 information causes a delay in permit processing.

10 Sec. 46.14.170. ADMINISTRATIVE ACTIONS REGARDING PERMITS. (a)  
11 Except as provided in AS 46.14.220 or in regulations adopted under  
12 AS 46.14.140(a)(6), after receipt of a complete application, and after notice and  
13 opportunity for public comment and hearing, the department shall issue or deny

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

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

19 (b) Notwithstanding (a) of this section, the department may establish a phased  
20 schedule for acting on operating permit applications submitted within 12 months  
21 following the date on which the federal administrator approves the state program under  
22 42 U.S.C. 7661a(d). A phased schedule must ensure that at least one-third of the  
23 applications submitted during the first 12 months of the state's operation of its permit  
24 program after federal approval will be acted on by the department during each of the  
25 first three 12-month periods following federal approval of the program. The  
26 department shall give priority to the issuance of permits for new facilities and  
27 modifications of existing facilities.

28 (c) Failure by the department to act within the time limits established in or  
29 under (a) or (b) of this section is considered to be a final agency action, but only for  
30 the purpose of judicial review to determine whether the court will require that action  
31 be taken by the department.

1           Sec. 46.14.180. MONITORING. Monitoring by the owner and operator of  
2 stack emissions or ambient air quality shall be required by the department only for  
3 purposes of demonstrating compliance with applicable permit requirements.  
4 Monitoring requirements must be reasonable and based on test methods, analytical  
5 procedures, and statistical conventions approved by the federal administrator or the  
6 department or otherwise generally accepted as scientifically competent. Unless  
7 otherwise agreed to by the owner and operator and the department,

8                   (1) the department may not require an owner and operator of a source  
9 to monitor emissions or ambient air quality solely for the purpose of scientific  
10 investigation or research; and

11                   (2) monitoring activities must be consistent with the applicable  
12 emission standards and other permit or permit application requirements.

13           Sec. 46.14.190. SINGLE PERMIT. (a) Except as provided in (b) of this  
14 section, the department shall issue only a single operating permit to a facility,  
15 regardless of whether a facility contains a single source or multiple sources.

16                   (b) The department may, upon request of a facility owner or operator, issue  
17 more than one permit for a facility. Substantive and procedural requirements otherwise  
18 applicable to a facility remain applicable regardless of whether the facility owner and  
19 operator apply for one or more permits.

20           Sec. 46.14.200. REVIEW OF PERMIT ACTION. The owner and operator,  
21 a person who participated in the public comment process, or a person who has a  
22 private, substantive, legally protected interest under state law that may be adversely  
23 affected by the permit action may request an adjudicatory hearing under the  
24 department's adjudicatory hearing procedures. After the issuance of an adjudicatory  
25 hearing decision, a party to the hearing may obtain judicial review of that decision as  
26 provided in the Alaska Rules of Appellate Procedure.

27           Sec. 46.14.210. GENERAL OPERATING PERMITS. After notice and  
28 opportunity for public comment and hearing, the department may, unless the permit  
29 is disapproved by the federal administrator, establish a general operating permit that  
30 would be applicable to more than one facility determined by the department to be  
31 similar in source structure. A general operating permit must contain provisions that

1 meet the requirements of this chapter that are applicable to operating permits. A  
2 general operating permit issued to a particular person takes effect when the person's  
3 application is determined to be complete unless the department notifies the applicant  
4 that the general permit is not applicable to the person's facility.

5 Sec. 46.14.215. TEMPORARY OPERATIONS. The department may issue a  
6 single operating permit under AS 46.14.170, authorizing a facility to operate at specific  
7 multiple locations in the state for temporary periods of time. A permit described in  
8 this section is valid only for the specific locations identified in the application and  
9 authorized by the department. The department may not issue a permit under this  
10 section unless the permit contains conditions that will ensure compliance with this  
11 chapter at each authorized location, including compliance with ambient air quality  
12 standards and applicable increment or visibility requirements adopted under this  
13 chapter. A permit under this section must require the owner and operator to notify the  
14 department at least 30 days before a change in location of a facility permitted under  
15 this section.

16 Sec. 46.14.220. OBJECTION BY FEDERAL ADMINISTRATOR. (a) An  
17 operating permit may not be issued under this chapter until the federal administrator  
18 approves the permit, or until 45 days after a copy of the final draft permit has been  
19 provided by the department to the federal administrator, whichever is earlier. If,  
20 during the 45-day period, the federal administrator files an objection with the  
21 department, the department shall notify the applicant of the objection. The department  
22 may not issue the permit until the objection is resolved or the permit is revised to meet  
23 the objection of the federal administrator. Upon request of an applicant, the  
24 department shall assist the applicant in an effort to resolve promptly an objection by  
25 the federal administrator.

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

30 (c) Regulations adopted under AS 46.14.140(a)(11) may provide that while a  
31 petition under (b) of this section is pending, compliance with an operating permit

1 issued under (a) of this section is considered to be compliance with this chapter insofar  
2 as those sections require an operating permit.

3 Sec. 46.14.230. DURATION OF OPERATING PERMITS. (a) An operating  
4 permit under this chapter, including an operating permit that contains a compliance  
5 schedule, shall be issued for a fixed term of five years after the date of issue, except  
6 as provided for temporary operations under AS 46.14.215 or unless a shorter term is  
7 requested by the permit applicant.

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

11 Sec. 46.14.235. FEDERAL TERMINATION, MODIFICATION, OR  
12 REVOCATION AND REISSUANCE OF PERMITS. The department shall take  
13 measures practicable and otherwise lawful to avoid termination, modification, or  
14 revocation and reissuance by the federal administrator of permits issued by the  
15 department under this chapter.

16 Sec. 46.14.240. PERMIT ADMINISTRATION FEES. (a) The owner or  
17 operator of a facility who is required to apply for a permit under AS 46.14.130 shall  
18 pay to the department all assessed permit administration fees established under (b) of  
19 this section except that the person named in a permit issued under AS 46.14.170 shall  
20 pay assessed permit administration fees incurred after the date the permit is issued.

21 (b) The department shall establish by regulation a permit administration fee  
22 rate. The rate shall be set on the basis of dollars per hour of service provided for a  
23 specific permittee. The department may periodically modify a fee rate to reflect  
24 increases or decreases in the actual reasonable costs of providing the services. The  
25 department shall assess permit administration fees on a periodic basis after service is  
26 rendered, but the department may assess a retainer toward this fee at the time work  
27 commences on a permit application or at the time departmental services are requested  
28 for the development of a permit application.

29 (c) For purposes of this section, "permit administration fees" are fees assessed  
30 to recover costs incurred by the department for the following services to a specific  
31 facility that are performed in order to implement the permit program established under

1 this chapter:

2 (1) providing preapplication consultation, assistance, and completeness  
3 review of applications for a permit, permit amendment, permit modification, or  
4 renewal;

5 (2) reviewing or assisting in preparation of facility specific permit  
6 support documents, including on-site evaluations;

7 (3) receiving, reviewing, preparing, processing, and issuing permits,  
8 permit amendments, modifications, reopenings, renewals and revocations, and  
9 reissuance;

10 (4) preparing general operating permits under AS 46.14.210; however,  
11 costs must be allocated on an equitable basis to each facility covered by the general  
12 operating permit;

13 (5) performing facility inspections and compliance evaluations;

14 (6) reviewing, compiling, and reporting facility specific emission,  
15 ambient monitoring, or process measurement data;

16 (7) preparing, evaluating, or processing plans or documents to obtain  
17 facility compliance or rectify noncompliance with permit terms and conditions, but not  
18 including any enforcement actions; and

19 (8) assessing and collecting delinquent permit administration fees and  
20 emission fees.

21 Sec. 46.14.250. EMISSION FEES. (a) A person named as permittee in a  
22 permit issued under AS 46.14.170 shall pay to the department all assessed emission  
23 fees established under this section.

24 (b) The department shall establish by regulation an emission fee rate. The rate  
25 shall be set on the basis of dollars per ton of air contaminant emitted. The department  
26 shall assess emission fees annually on or before July 1 based on a facility's estimated  
27 assessable emissions for the subsequent fiscal year. The department may allow  
28 installment payments of assessed emission fees.

29 (c) For a facility that begins operation during a fiscal year, the department  
30 shall prorate the first year's fee to cover the time period occurring before the next  
31 annual payment date. The owner or operator shall pay the initial emission fee upon

1 commencement of lawful facility operation unless authorized to pay by installments  
2 under (b) of this section. The first year's emission fee may not duplicate a fee paid  
3 by a permittee under AS 44.46.025 for the same sources for the same time period. If  
4 the fees would otherwise be duplicative, the department shall provide a credit toward  
5 the emission fee in the amount of the unused balance of the fee collected under  
6 AS 44.46.025. The unused balance to be credited shall be based on prorating the total  
7 original fee under AS 44.46.025 for the time period for which an emission fee applies.

8 (d) The department shall design the emission fee rate to distribute the total  
9 annual incurred costs described under (h) of this section in a manner so that each  
10 permittee is assessed an annual emission fee that reflects an equitable apportionment  
11 of the fees paid by each facility type, size, or category. In making an apportionment  
12 under (f)(6) of this section, the department shall consider factors such as exemptions  
13 or reduced rates for small amounts of emissions, limits upon assessable emissions,  
14 exempting small business facilities from the costs of the small business assistance  
15 program established under AS 46.14.300, air pollution prevention efforts, and other  
16 factors that may ensure fair distribution of the costs described under (h) of this section.

17 (e) The department shall set the initial fee rate for the first two years following  
18 approval of the permit program under this chapter by the federal administrator on the  
19 basis of dollars per ton of assessable emissions. In calculating assessable emissions  
20 for the purpose of this subsection, the department may not include an amount in excess  
21 of 4,000 tons per year of an air contaminant not defined as a regulated pollutant under  
22 42 U.S.C. 7661a(b)(3)(B)(ii) (Clean Air Act, sec. 502 (b)(3)(B)(ii)).

23 (f) After the two years described in (e) of this section, the department shall set  
24 the emission fee rate in regulation to implement the policy established in (d) of this  
25 section. The department shall base the regulation on the findings of a report, which  
26 the department shall make available to the public with proper notice before adoption  
27 of the regulation, that examines

- 28 (1) fees assessed;  
29 (2) alternative fee rates or formulas;  
30 (3) types, sizes, or categories of facilities, their respective emission  
31 quantities, and their previous or proposed fee burden;

- 1 (4) apparent inequities encountered in the initial fee rate;  
2 (5) total costs incurred or anticipated to be incurred under (h) of this  
3 section; and  
4 (6) other factors that ensure fair distribution of the costs described in  
5 (h) of this section.

6 (g) The department shall periodically, and at least every three years, evaluate  
7 the fee rate set under this section to determine if it is responsive to the policy  
8 established in (d) of this section and shall provide its findings in a report.

9 (h) In this section,

10 (1) "assessable emission" means the quantity of each air contaminant  
11 for which emission fees are assessed and is the lesser of

12 (A) the annual rate of emissions, in tons per year, of each air  
13 contaminant authorized by the facility's operating permit; or

14 (B) the projected annual rate of emissions, in tons per year, of  
15 each air contaminant by the facility based upon previous actual annual  
16 emissions if the permittee can demonstrate to the department its previous actual  
17 annual rate of emissions through monitoring, modelling, calculations, or other  
18 method acceptable to the department;

19 (2) "emission fees" mean fees assessed to recover costs incurred by the  
20 department for execution of the permit program established under this chapter that are  
21 generally not associated with service provided to a specific facility; the costs may  
22 include rent, utilities, permit program management, administrative and accounting  
23 services, and other costs as identified by the department in regulations.

24 Sec. 46.14.255. INTEREST FOR NONPAYMENT. (a) The department may  
25 assess interest against the owner and operator after a fee is due under this chapter and  
26 is unpaid. Interest assessed under this subsection shall be computed at one percentage  
27 point higher than the prime rate, as defined in AS 44.88.599, for the day the fee was  
28 due.

29 (b) If a permittee has failed to pay a fee imposed under AS 46.14.240 -  
30 46.14.250, a penalty, assessment, or damage award imposed under AS 46.03.760(f) or  
31 46.03.790 for a violation of this chapter, or interest imposed under (a) of this section,

1 the department may, after 30 days' written notice to the permittee refuse to issue or  
2 renew permits requested by the permittee or refuse to amend or modify a permit when  
3 the amendment or modification is requested by the permittee.

4 Sec. 46.14.260. CLEAN AIR PROTECTION FUND. (a) The clean air  
5 protection fund is established. The fund consists of fees collected by the department  
6 under AS 46.14.240 and 46.14.250 and under regulations authorized by AS 46.14.140,  
7 as required by 42 U.S.C. 7661a(b)(3)(C)(iii) (Clean Air Act, sec. 502(b)(3)(C)(iii)) for  
8 state participation in the federal emission control permit program.

9 (b) The money deposited into the clean air protection fund may only be used  
10 to cover the reasonable direct and indirect costs required to support the permit program  
11 under this chapter and the activities of the small business assistance program that are  
12 directed at facilities subject to this chapter, not including court costs or other costs  
13 associated with an enforcement action.

14 Sec. 46.14.270. SPECIAL ACCOUNT. Civil or criminal penalties, fines,  
15 assessments, or damages, and interest, attorney fees, and costs collected as a result of  
16 a violation relating to this chapter and interest collected under AS 46.14.255 shall be  
17 deposited in the general fund and credited to a special account called the "clean air  
18 protection account."

19 Sec. 46.14.275. TIMELY AND COMPLETE APPLICATION AS SHIELD.  
20 If an owner and operator have submitted a timely and complete application for a  
21 permit or a permit renewal, as applicable, but final action has not been taken on the  
22 application, the owner's and operator's failure to have an operating permit is not a  
23 violation of this chapter unless the delay in final action was due to the failure of the  
24 owner and operator to submit information required or requested to process the  
25 application. An owner and operator required to have an operating permit under this  
26 chapter are not in violation of the operating permit program established under this  
27 chapter before the date on which the owner and operator are required to submit an  
28 application under AS 46.14.150.

29 Sec. 46.14.280. TERMINATION, MODIFICATION, REOPENING, OR  
30 REVOCATION AND REISSUANCE OF PERMITS BY THE DEPARTMENT. (a)  
31 After 30 days' written notice to the permittee, the department

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(1) may terminate, modify, 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) the permittee has failed to construct or modify a facility within the time period specified in a construction permit, if any, required under AS 46.14.130(a);

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

(A) the permit contains a material mistake; or

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

(3) shall reopen a permit issued under this chapter

(A) based on a determination of the federal administrator that the permit must be revised to comply with 42 U.S.C. 7401-7671q (Clean Air Act); or

(B) to incorporate changes in law, or to impose equivalent emission limitation, that become applicable after the permit is issued if the permit is issued to a major facility and has a remaining duration of three or more years; the department shall make revisions allowed under this subparagraph as soon as practicable, but, regarding a change in law, no later than 18 months after the change in law takes effect; the department may not reopen the permit of a major facility under this subparagraph if the change in law is not effective until after the date that the permit expires.

(b) Reopening of a permit under (a)(3) of this section shall be treated as a permit renewal by the department if the procedural requirements for permit renewal have been met.

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

4 Sec. 46.14.285. AMENDMENT AND MODIFICATION OF PERMIT UPON  
5 REQUEST OF PERMITTEE. (a) A permittee may request

6 (1) a permit amendment that provides for administrative changes to a  
7 permit that do not result in material changes in permit terms or conditions, such as  
8 changes in the name of the owner or operator, mailing address, registered agent, or  
9 assessable emissions;

10 (2) an expedited authorization for minor changes in permit terms and  
11 conditions that provide for flexibility in the operation of a facility consistent with 42  
12 U.S.C. 7661a(b)(10) (Clean Air Act, sec. 502(b)(10)), and regulations adopted under  
13 that paragraph; or

14 (3) a modification of a permit to authorize significant changes in permit  
15 terms and conditions consistent with this chapter and regulations adopted under  
16 AS 46.14.140.

17 (b) The department shall review all requests submitted under (a) of this section  
18 and issue or deny the permit amendment or modification or otherwise authorize or  
19 deny the request consistent with this chapter and regulations adopted under this  
20 chapter.

21 Sec. 46.14.290. PERMIT AS SHIELD. (a) To the extent allowed under  
22 42.U.S.C. 7661c(f) (Clean Air Act, sec. 504(f)), a permittee is considered in  
23 compliance with applicable requirements of this chapter, regulations adopted under this  
24 chapter and 42 U.S.C. 7401 - 7671q (Clean Air Act) and regulations adopted under it,  
25 if

26 (1) the applicable requirements are included and specifically identified  
27 in the owner or operator's permit; or

28 (2) the requirements are determined in writing not to be applicable to  
29 the permitted facility; a determination made under this paragraph shall be included in  
30 the permit.

31 (b) This section does not alter or affect

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

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

5 (3) the ability of the department to obtain information from an owner  
6 or operator of a facility under AS 46.14.020(b).

7 ARTICLE 3. SMALL BUSINESS ASSISTANCE PROGRAM.

8 Sec. 46.14.300. SMALL BUSINESS ASSISTANCE PROGRAM. (a) A small  
9 business assistance program is established in the department. The department shall  
10 include the program in the state air quality control plan developed under 42 U.S.C.  
11 7401 - 7671q (Clean Air Act).

12 (b) The small business assistance program shall, by regulation, meet the  
13 requirements of 42 U.S.C. 7661f(a) (Clean Air Act, sec. 507(a)), including the  
14 requirement that a small business advocate be designated.

15 (c) Except as provided in AS 46.14.310(b), the department shall provide  
16 assistance as described in (b) of this section to a requesting facility that is not a small  
17 business concern as defined in 15 U.S.C. 631 but that is subject to the requirements  
18 of this chapter if the legislature appropriates money from the general fund for this  
19 purpose.

20 Sec. 46.14.310. POWER TO LIMIT SMALL BUSINESS ASSISTANCE  
21 PROGRAM. (a) After consultation with the federal administrator and the  
22 administrator of the United States Small Business Administration and after providing  
23 notice and opportunity for public hearing, the department may exclude from the scope  
24 of the small business assistance program established in AS 46.14.300 a category or  
25 subcategory of small business facilities that the department finds to have sufficient  
26 technical and financial capabilities to meet the requirements of this chapter and federal  
27 law without the assistance provided under AS 46.14.300 - 46.14.320.

28 (b) Nothing in AS 46.14.300(c) precludes the department from excluding a  
29 business facility or category of business facilities that the department finds to have  
30 sufficient technical and financial capabilities to meet the requirements of this chapter  
31 without assistance from the department.

1           Sec. 46.14.320. COMPLIANCE ADVISORY PANEL. (a) There is  
2 established in the department a compliance advisory panel whose members shall serve  
3 staggered three-year terms. A member may not serve more than two three-year terms  
4 consecutively.

5           (b) The panel consists of

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

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

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

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

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

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

24           (c) The panel members shall serve without compensation but are entitled to  
25 transportation expenses and per diem as authorized for members of boards and  
26 commissions under AS 39.20.180.

27           (d) The compliance advisory panel shall

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

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

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

4 (4) make periodic reports to the administrator concerning the  
5 compliance of the small business assistance program with requirements of 44 U.S.C.  
6 3501 (Paperwork Reduction Act), 5 U.S.C. 601 (Regulatory Flexibility Act), and 5  
7 U.S.C. 504 (Equal Access to Justice Act);

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

11 (6) use the assistance of the small business advocate designated under  
12 AS 46.14.300(b) in the development and dissemination of panel reports and advisory  
13 opinions.

#### 14 ARTICLE 4. LOCAL PROGRAMS.

15 Sec. 46.14.400. LOCAL AIR QUALITY CONTROL PROGRAMS. (a) With  
16 the approval of the department, a municipality may establish and administer within its  
17 jurisdiction a local air quality control program that operates in lieu of and is consistent  
18 with all or part of the department's air quality program as established under this  
19 chapter. A first or second class borough may administer an air quality control program  
20 approved by the department under this subsection on an areawide basis and is not  
21 subject to the restrictions for acquiring additional areawide powers specified in  
22 AS 29.35.300 - 29.35.350. A third class borough may administer a local air quality  
23 control program approved by the department under this subsection only in a service  
24 area formed under AS 29.35.490(b) or (c).

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

28 (c) If the department finds that the location, character, or extent of particular  
29 concentrations of population, air contaminant sources, the geographic, topographic, or  
30 meteorological considerations, or a combination of these factors make impracticable  
31 the maintenance of appropriate levels of air quality without an areawide air pollution

1 control program, the department may determine the boundaries within which a local  
2 air quality control program is necessary and direct that a local air quality control  
3 program spanning those boundaries is the only acceptable alternative to direct state  
4 administration.

5 (d) A municipality or a local air quality district seeking department approval  
6 for a local air quality control program shall enter into a cooperative agreement with  
7 the department that is designed to avoid unnecessary duplication of responsibilities.  
8 The cooperative agreement must include provisions specifying

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

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

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

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

17 (e) A local air quality control program shall provide for the exemption of a  
18 locally registered motor vehicle from motor vehicle emission requirements adopted  
19 under AS 46.14.510 if the motor vehicle is not used within the program's jurisdiction.

20 (f) A municipality or a local air quality district administering a program under  
21 this section shall administer its local air quality control program according to this  
22 chapter, regulations adopted under those sections, and its cooperative agreement under  
23 (d) of this section. A municipality or local air quality district's program may, upon  
24 a finding by the local agency and an affirmative agreement by the department,  
25 establish a more stringent requirement than the stationary source permit program  
26 authorized under this chapter if public health or air quality effects warrant the  
27 additional or more stringent requirement and the municipality or district has used  
28 procedures substantially equivalent to those required under AS 46.14.010 - 46.14.015  
29 before establishing the more stringent requirement. This subsection does not prohibit  
30 a municipality or local air quality control district from establishing a mobile source  
31 program more stringent than the state program without making findings of public

1 health or air quality effects or using procedures substantially equivalent to those  
2 required under AS 46.14.010 - 46.14.015.

3 (g) A determination, order, permit, or permit action issued under a local air  
4 quality control program is considered to be a determination, order, permit, or permit  
5 action of the department.

6 (h) Notwithstanding any other law or rule of law, the department may not  
7 delegate or enable another department or government entity to establish fee rates or  
8 collect fees under AS 46.14.240 or 46.14.250.

9 Sec. 46.14.410. INADEQUACY OF LOCAL PROGRAM. (a) If a  
10 municipality or a local air quality district has an approved local air quality control  
11 program under AS 46.14.400 and the department determines that the program is being  
12 implemented in a manner that fails to meet the terms of the cooperative agreement or  
13 is otherwise being inappropriately administered, the department shall give written  
14 notice setting out its determination to the municipality or local air quality district.  
15 Within 45 days after giving written notice, the department shall conduct a public  
16 hearing on the matter. The hearing shall be recorded by any means that ensures an  
17 accurate record.

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

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

1 modified allocation of responsibilities between the department and municipality or the  
2 local air quality district.

3 (d) A municipality or local air quality district that has had its cooperative  
4 agreement terminated may, with the department's approval, resume a local air quality  
5 control program if the municipality or district agrees to comply with AS 46.14.400 and  
6 with any corrective action plan required by the department.

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

#### 15 ARTICLE 5. MISCELLANEOUS PROVISIONS.

16 Sec. 46.14.500. AIR POLLUTION FROM OUTER CONTINENTAL SHELF  
17 ACTIVITIES. (a) The department shall seek delegation of authority from the federal  
18 administrator to implement and enforce the terms and provisions of 42 U.S.C. 7627  
19 (Clean Air Act, sec. 328) for the Pacific and Arctic Ocean areas offshore of the state.  
20 The department may adopt regulations that are necessary to acquire this delegated  
21 authority.

22 (b) In adopting regulations under this section, the department shall ensure that  
23 facilities located within 25 miles of the seaward boundary of the state are subject to  
24 the same air quality control requirements that would be applicable if the facility were  
25 located in the corresponding onshore area. For purposes of this subsection, facilities  
26 located within 25 miles of the seaward boundary of the state include a vessel servicing  
27 or associated with the facility while at the facility or en route to or from the facility  
28 and within 25 miles of the facility.

29 (c) In this section, "corresponding onshore area" means, with respect to a  
30 facility located within 25 miles of the seaward boundary of the state, the onshore  
31 attainment or nonattainment area that is closest to the facility, unless the commissioner

1 determines that another area with more stringent requirements relating to control and  
2 abatement of air pollution may reasonably be expected to be affected by emissions  
3 from the offshore facility; this determination shall be based on the potential for air  
4 contaminants from the facility to reach the other onshore area and the potential of the  
5 air contaminants to affect the efforts of the other onshore area to attain or maintain a  
6 federal ambient air quality standard set under 42 U.S.C. 7470 - 7492 (Title I, Part C,  
7 Clean Air Act) or a state equivalent.

8 Sec. 46.14.510. MOTOR VEHICLE POLLUTION. (a) When the department  
9 determines that the state of knowledge and technology may allow or make appropriate  
10 the control of emissions from motor vehicles to further air quality control, the  
11 department may provide, by regulation, for the control of the emissions from motor  
12 vehicles. The regulations may prescribe requirements for the installation and use of  
13 equipment designed to reduce or eliminate emissions and for the proper maintenance  
14 of this equipment.

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

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

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

1 inspected in accordance with the standards, testing techniques, and instructions  
2 furnished by the department and the motor vehicle has been found to meet those  
3 standards. A valid certificate of inspection for the emission control system, if required  
4 by the department, must be presented to the Department of Public Safety before that  
5 department may register a motor vehicle.

6 Sec. 46.14.515. INSPECTION. (a) An officer or employee of the department  
7 designated by the commissioner or an inspector authorized by the commissioner and  
8 certified under regulations adopted under AS 46.14.140(a)(13) may, upon presentation  
9 of credentials and at reasonable times with the consent of the owner or operator, enter  
10 upon or through any premises of a facility regulated under this chapter to

11 (1) inspect and copy any records required to be maintained;

12 (2) inspect any source, monitoring equipment, or method required to  
13 be used; or

14 (3) sample any emissions that the owner and operator of the facility is  
15 required to sample.

16 (b) During an inspection under this section, the inspector shall comply with  
17 applicable health and safety standards.

18 Sec. 46.14.520. CONFIDENTIALITY OF RECORDS. Records, reports, and  
19 information, and parts of records, reports, and information, other than emission data,  
20 in the department's possession or control are considered confidential records and shall  
21 be kept confidential and in separate files if the owner and operator have certified under  
22 oath to the department or authorized local program that

23 (1) public disclosure would tend to affect adversely the owner's and  
24 operator's competitive position; and

25 (2) the records, reports, or information, or parts of the records, reports,  
26 or information, would divulge production figures, sales figures, processes, production  
27 techniques, or financial data of the owner and operator that are entitled to protection  
28 as trade secrets.

29 Sec. 46.14.525. PUBLIC RECORDS. Except as provided in AS 46.14.520,  
30 permits, permit applications, emissions and monitoring reports, compliance reports,  
31 certifications, and monitoring, reporting, and quality assurance plans in the

1 department's possession or control are available to the public for inspection and  
2 copying.

3 Sec. 46.14.530. STATE AND FEDERAL AID. (a) A municipality or local  
4 air quality district with a local air quality control program may apply for, receive,  
5 administer, and spend state aid for the control of air emissions or the development and  
6 administration of the program if an application is first submitted to and approved by  
7 the department. Subject to available money appropriated by the legislature for the  
8 purpose of this section, the department may approve an application if it is consistent  
9 with the terms and conditions of the applicable cooperative agreement and meets the  
10 requirements of this chapter.

11 (b) A municipality or local air quality district with a local air quality control  
12 program may apply for, receive, administer, and spend federal aid for the control of  
13 air emissions or the development and administration of the program.

14 Sec. 46.14.540. AUTHORITY OF DEPARTMENT IN CASES OF  
15 EMERGENCY. (a) When the commissioner finds that an act of God, act of war, act  
16 of terrorism, or similar catastrophe necessitates emergency use of an unpermitted  
17 source or emergency use of a permitted source in a manner not authorized by the  
18 permit, the commissioner may waive procedural requirements of this chapter and issue  
19 an order to authorize emergency use of the source. When acting under this section,  
20 the commissioner shall impose conditions necessary to protect life, human health,  
21 welfare, property, and the environment and may impose other conditions the  
22 commissioner finds necessary and appropriate.

23 (b) An authorization issued under this section automatically terminates within  
24 a reasonable time after abatement of the emergency, subject to a maximum of 30 days  
25 from the date of issuance. However, the commissioner may reissue an authorization,  
26 if warranted, that may remain in effect for up to another 30 days. An authorization  
27 may be reissued more than once.

28 (c) A person acting under an order issued under (a) of this section is  
29 considered to be acting in compliance with the operating permit program established  
30 in this chapter.

31 (d) The commissioner may delegate the commissioner's authority under this

1 section to deputy commissioners and division directors in the department.

2 Sec. 46.14.550. RESPONSIBILITIES OF OWNER AND OPERATOR.

3 Notwithstanding use of the conjunctive or disjunctive in a provision of this chapter,  
4 before issuance of a permit under AS 46.14.170 both the owner and operator of a  
5 facility are responsible for compliance with this chapter and regulations adopted under  
6 this chapter. If the owner and operator of the facility are separate persons, only one  
7 person is required to discharge a specific responsibility. After issuance of a permit  
8 under AS 46.14.170, only the permittee is responsible for permitted operations. The  
9 permittee shall have a designated agent for service of process in the state.

10 Sec. 46.14.560. UNAVOIDABLE MALFUNCTIONS AND EMERGENCIES.

11 Excess emissions caused by an on-site emergency, malfunction, or unavoidable  
12 nonroutine repairs of a source including pollution control equipment or process  
13 equipment constitute an affirmative defense, when asserted under regulations adopted  
14 under AS 46.14.140, to an action brought for noncompliance with a permit or an  
15 emission limitation and may not count as an increase in emissions unless an ambient  
16 air quality standard is exceeded. This section does not limit the department's power  
17 to enjoin the emission or require corrective action. This provision is in addition to any  
18 emergency or upset provision contained in an applicable requirement.

19 ARTICLE 6. GENERAL PROVISIONS.

20 Sec. 46.14.900. LIMITATIONS. This chapter does not

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

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

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

28 Sec. 46.14.990. DEFINITIONS. In this chapter,

29 (1) "air contaminant" means a regulated air contaminant or a hazardous  
30 air contaminant;

31 (2) "ambient air" means that portion of the atmosphere, external to

1 buildings, to which the general public has access;

2 (3) "ambient air quality standard" means a standard, other than an  
3 emission standard, adopted under AS 46.14.010, 46.14.140, 46.14.400(f), or 42 U.S.C.  
4 7409 (Clean Air Act, sec. 109);

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

7 (5) "construction permit" means a permit under AS 46.14.130(a);

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

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

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

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

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

25 (11) "fugitive emissions" means emissions of an air contaminant that  
26 could not reasonably be emitted from a contaminant outlet;

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

29 (13) "local air quality control program" means a program authorized  
30 under AS 46.14.400 to implement some or all of the provisions of this chapter;

31 (14) "modification" or "modify" means to make a change or a series

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

3 (15) "operating permit" means a permit under AS 46.14.130(b);

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

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

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

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

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

23 (B) the fugitive emissions specifically exempted under 42  
24 U.S.C. 7401 - 7671q (Clean Air Act);

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

29 (21) "regulated air contaminant" means

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

1 (B) oxides of nitrogen;  
2 (C) a volatile organic compound; and  
3 (D) a pollutant that is addressed by a standard adopted under  
4 42 U.S.C. 7411 - 7412 (Clean Air Act, sec. 111 - 112);

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

6 (A) is owned or operated by a person who employs 100 or  
7 fewer individuals;

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

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

11 (23) "source" means a device, process, activity, or equipment that  
12 causes, or could cause, a release of an air contaminant;

13 (24) "TPY" means tons per year.

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

15 (10) the vehicle is subject to a state-approved [LOCAL] emission  
16 inspection program adopted [BY MUNICIPAL ORDINANCE] under AS 46.14.400 or  
17 46.14.510 [AS 46.03.210], and the vehicle does not meet the standards of that  
18 program, unless the vehicle uses a fuel source that does not primarily emit carbon  
19 monoxide;

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

21 Sec. 28.10.423. EMISSION CONTROL INSPECTION PROGRAM FEES. In  
22 addition to the annual registration fee specified in AS 28.10.421, a \$1 fee is imposed  
23 upon every vehicle required to be inspected under an emission control program  
24 established under AS 46.14.400 or 46.14.510 [AS 46.03.210]. This fee shall be  
25 collected at the same time and in the same manner as the registration fee.

26 \* Sec. 5. AS 29.10.200 is amended by adding a new paragraph to read:

27 (51) AS 29.35.055 (local air quality control program).

28 \* Sec. 6. AS 29.35 is amended by adding a new section to read:

29 Sec. 29.35.055. LOCAL AIR QUALITY CONTROL PROGRAM. A  
30 municipality may establish a local air quality control program as provided in  
31 AS 46.14.400 only if the municipality has obtained the consent of its governing body

1 through an ordinance authorizing the participation. This section applies to home rule  
2 and general law municipalities.

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

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

6 (1) provide transportation systems;

7 (2) provide water pollution control;

8 (3) provide air pollution control in accordance with AS 46.14.400

9 [AS 46.03.140 - 46.03.230];

10 (4) license day care facilities;

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

12 \* Sec. 8. AS 29.35.210(a) is amended to read:

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

15 (1) provide transportation systems;

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

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

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

21 (5) provide air pollution control under AS 46.14.400 [IN  
22 ACCORDANCE WITH AS 46.03.140 - 46.03.230];

23 (6) provide water pollution control;

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

26 (8) provide for economic development;

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

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

31 (11) subject to AS 28.01.010, regulate the licensing and operation of

1 motor vehicles and operators;

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

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

8 \* Sec. 9. AS 29.35.210(b) is amended to read:

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

11 (1) provide transportation systems;

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

13 (3) provide air pollution control under AS 46.14.400 [IN  
14 ACCORDANCE WITH AS 46.03.140 - 46.03.230];

15 (4) provide water pollution control;

16 (5) license day care facilities.

17 \* Sec. 10. AS 37.05.146(4) is amended by adding a new subparagraph to read:

18 (R) clean air protection fund (AS 46.14.260).

19 \* Sec. 11. AS 44.46.025(a) is amended to read:

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

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

25 (2) certificates of inspection for motor vehicles under AS 46.14.400  
26 or 46.14.510 [AIR QUALITY PERMITS UNDER AS 46.03.140 AND 46.03.160];

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

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

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

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

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

3 \* Sec. 12. AS 44.46.025 is amended by adding a new subsection to read:

4 (c) The department may adopt regulations that prescribe reasonable fees to  
5 cover the direct and indirect costs of air quality permit programs under AS 46.14 and  
6 may establish procedures for the collection of those fees.

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

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

11 \* Sec. 14. AS 45.45.400(a) is amended to read:

12 (a) A person engaged in the business of selling used motor vehicles may not  
13 transfer or assign the owner's title or interest in the used vehicle to a person who  
14 resides in an area subject to a state-approved emission inspection [A  
15 MUNICIPALITY THAT HAS AN AIR POLLUTION CONTROL] program  
16 established under AS 46.14.400 or 46.14.510 [AS 46.03.210] and who intends to use  
17 the vehicle in that area [MUNICIPALITY], unless the vehicle has a certificate of  
18 compliance or noncompliance as required under the air pollution control requirements  
19 applicable in that area [MUNICIPALITY].

20 \* Sec. 15. AS 46.03.760(f) is amended to read:

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

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

1 which the discharge degrades existing environmental quality;

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

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

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

8 \* Sec. 16. AS 46.03.765 is amended to read:

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

19 \* Sec. 17. AS 46.03.780(a) is amended to read:

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

27 \* Sec. 18. AS 46.03.790(a) is amended to read:

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

30 (1) violates a provision of this chapter, AS 46.04, [OR] AS 46.09, or  
31 AS 46.14, a regulation or order of the department, or a permit, approval, or acceptance,

1 or a term or condition of a permit, approval, or acceptance issued under this chapter,  
2 AS 46.04, [OR] AS 46.09, or AS 46.14;

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

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

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

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

17 \* Sec. 19. AS 46.03.790 is amended by adding a new subsection to read:

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

22 \* Sec. 20. AS 46.03.850(a) is amended to read:

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

30 \* Sec. 21. AS 46.03.860 is amended to read:

31 Sec. 46.03.860. INSPECTION WARRANT. The department may seek search

1 warrants for the purpose of investigating actual or suspected sources of pollution or  
2 contamination or to ascertain compliance or noncompliance with AS 46.14 or this  
3 chapter or a regulation adopted under AS 46.14 or this chapter.

4 \* Sec. 22. AS 46.03.875 is amended to read:

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

10 \* Sec. 23. AS 46.03.890(b) is amended to read:

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

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

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

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

26 (A) emission control [AIR EMISSIONS] permit - AS 46.14

27 [AS 46.03.150], 18 AAC 50.120;

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

29 (8) "state agency" means a state department, commission, board or  
30 other agency of the state; for the purposes of this chapter "state agency" also means  
31 a local or regional air pollution control authority established under AS 46.14.400

1 [AS 46.03.210].

2 \* Sec. 27. AS 46.03.140, 46.03.150, 46.03.160, 46.03.170, 46.03.180, 46.03.190, 46.03.210,  
3 46.03.220, 46.03.225, 46.03.230, and 46.03.245 are repealed.

4 \* Sec. 28. AS 46.14.110, enacted by sec. 2 of this Act, is repealed on the day after the day  
5 the federal administrator approves the state's program under 42 U.S.C. 7661a(d) (Clean Air  
6 Act, sec. 502(d)).

7 \* Sec. 29. COMPLIANCE ADVISORY PANEL; INITIAL TERMS. Notwithstanding  
8 AS 46.14.320, added by sec. 2 of this Act, the terms of the initial members of the compliance  
9 advisory panel shall be as follows:

10 (1) the terms of the members appointed under AS 46.14.320(b)(1) shall be one  
11 year;

12 (2) the terms of the members appointed under AS 46.14.320(b)(3)(A) shall be  
13 three years;

14 (3) the terms of the members appointed under AS 46.14.320(b)(3)(B) and (C)  
15 shall be two years.

16 \* Sec. 30. REGULATIONS. The Department of Environmental Conservation may adopt  
17 regulations as authorized by this Act, and other statutory authority, to implement changes  
18 made by this Act. Regulations adopted under this section may not take effect until the  
19 corresponding enabling statute takes effect under sec. 31 or sec. 32 of this Act.

20 \* Sec. 31. Sections 1, 3 - 30, a AS 46.14.010, 46.14.015, 46.14.020, 46.14.030,  
21 46.14.110, 46.14.120(a) and (c) - (e), 46.14.130(a)(1) - (3) and (5), 46.14.140, 46.14.170,  
22 46.14.180, 46.14.190, 46.14.200, 46.14.215, 46.14.255, 46.14.280, 46.14.300, 46.14.310,  
23 46.14.320, 46.14.400, 46.14.410, 46.14.500, 46.14.510, 46.14.515, 46.14.520, 46.14.525.  
24 46.14.530, 46.14.540, 46.14.550, 46.14.560, 46.14.900, and 46.14.990, enacted by sec. 2 of  
25 this Act, take effect immediately under AS 01.10.070(c).

26 \* Sec. 32. AS 46.14.120(b), 46.14.130(a)(4) and (b), 46.14.150, 46.14.160, 46.14.210,  
27 46.14.220, 46.14.230, 46.14.235, 46.14.240, 46.14.250, 46.14.260, 46.14.270, 46.14.275,  
28 46.14.285, and 46.14.290, enacted by sec. 2 of this Act, take effect on the day after the day  
29 the federal administrator approves the state program under 42 U.S.C. 7661a(d) (Clean Air Act,  
30 sec. 502(d)). The commissioner shall immediately notify the lieutenant governor and the  
31 revisor of statutes of the day of the federal administrator's approval.

# HB 167 / AIR QUALITY PERMITS

## SECTIONAL ANALYSIS

### Section 1.

**POLICY AND PURPOSES** - The section describes the intent of the Alaska Legislature for enacting this bill.

### Section 2.

**AS 46.14.010. EMISSION CONTROL REGULATIONS** - Subsection (a) provides authority for the department to establish ambient air quality standards and emission standards.

Subsection (b) identifies a specific subset of standards that may only be adopted following the completion of special review procedures described in AS 46.14.015.

Subsection (c) describes the type of findings that must be made prior to adopting a standard described in (b).

Subsection (d) requires that certain performance requirements contained within permits must be adopted in regulations if they are generally applicable statewide or to groups of facilities.

Subsection (e) provides for setting facility wide emission standards in lieu of individual exhaust stack emission standards.

**AS 46.14.015. SPECIAL PROCEDURES FOR MORE STRINGENT REGULATIONS** - The section describes the details of how the department is to secure independent peer review of its findings prior to proposing adoption of a standard that fits the criteria of AS 46.14.010(b). Peer review is performed by at least three separate parties outside the agency who have particular expertise in the subject matter under review. The department then takes the original findings and the peer review reports to public review prior to considering the adoption of a standard. Peer review services are secured by professional service contracts.

**AS 46.14.020. CLASSIFICATION OF FACILITIES OR SOURCES; REPORTING** - This section serves two purposes. First, it enables the language in the bill to be succinct by allowing certain facility types identified in federal law to be classified and listed in regulation rather than statute. Secondly, it enables the department to request information from any generator of air pollution in order to assess whether that activity potentially endangers public health or air resource standards.

**AS 46.14.030. STATE AIR QUALITY PLAN** - The purpose of this section is to delegate authority from the Governor to the commissioner for actions related to the state plan. The operating permit program will be only incidentally related to the state plan under the new Clean Air Act.

**AS 46.14.110. ADDITIONAL CONTAMINANT CONTROL MEASURES** - This section brings forward existing law in AS 46.03.160 into the newly created chapter. The statute is the principal authority used now to issue air quality permits. The section is repealed on the date that the federal administrator approves the revised permit program which is described throughout the chapter.

**AS 46.14.120. PERMITS FOR CONSTRUCTION, MODIFICATION, OR OPERATION**- The section contains the basic authority to require construction and operating permits for subject facilities.

Subsection (b) allows a facility to begin operation even while its application is still pending provided that an application was timely submitted. This is commonly referred to as the "application shield" which will be especially important during program start-up.

Subsection (e) describes under what conditions a source or facility may be exempted from the permit program. Under federal law there is a very small set of sources that may be considered for exemption. This language provides that if the federal administrator exempts a source or facility, the commissioner of ADEC, after "considering the factors used by the administrator ..... shall issue a similar determination unless public health or air quality effects provide a reasonable basis to regulate the source. This reasonable basis standard (term of art established by the courts relating to the integrity of the evidence) exists in other sections of the bill to provide for the potential event that future knowledge may support that additional regulatory action is justifiable and prudent for protecting public health. Additional criteria necessary to support adoption of this type of regulation is delineated in AS 46.14.010 & 46.14.015.

**AS 46.14.130. FACILITIES REQUIRING PERMITS** - The purpose of this section is to delineate which facilities need either construction permits or operating

permits. To keep the text of this section brief, the section calls upon the authority of another section (AS 46.03.020) to enable classification or grouping of facility types that are either unique relative to the need to acquire a permit under state or federal law or must be subject to a specific type of review under federal law as part of the permit review.

In general, whether or not a facility needs a permit is based upon the quantity of air pollution that the facility has the **potential** to emit. Other provisions in the bill (AS 46.14.140) allow the department to recognize the **actual** rate of emissions in determining whether a permit is needed.

**AS 46.14.140. EMISSION CONTROL PERMIT PROGRAM REGULATIONS -** In this section, authority is established to adopt regulations to implement the permit program. The essential elements of the regulations and permits are listed and certain criteria are set for those regulations. The language "The regulations must be reasonable and adequate, and provide flexibility in the operation of a facility..." is established as a performance criteria for the regulations.

**AS 46.14.150. TIME FOR SUBMISSION OF PERMIT APPLICATIONS -** The section identifies when operating permit applications are due. In most cases the due date is within twelve months after the permit program is first approved by EPA or twelve months after a facility becomes regulated (begins to operate).

**AS 46.14.160. COMPLETENESS DETERMINATION -** Permit applications are to be reviewed within 60 days after submittal, with the applicant being informed if the application is either complete or incomplete. If no written response is made within the 60 days the application is deemed complete. Subsection (c) allows the department to request additional information after completeness, provided the information is required to evaluate or act on the application. This is the second of three sections required for the application shield.

**AS 46.14.170. ADMINISTRATIVE ACTIONS REGARDING PERMITS -** The language in this section specifies the timeliness for permit decisions. General permits and temporary operating permits will be issued in shorter time periods than other operating permits.

**AS 46.14.180. MONITORING -** The section describes that air monitoring required by the department must be associated with compliance assessment for the facility's regulated air emissions.

**AS 46.14.190. SINGLE PERMIT -** The section specifies that only a single operating permit is required for each facility. However, a facility operator may request that more than one permit be issued to assist in internal management of the air pollution generating equipment at the facility.

**AS 46.14.200. REVIEW OF PERMIT ACTION** - This section describes that any person or party may obtain an adjudicatory hearing and then a judicial review if that party 1) participated in the public comment process or 2) is otherwise a person who has a private, substantive and legally protected interest under state law.

**AS 46.14.210. GENERAL OPERATING PERMITS** - Many general or "master" permits will be developed, each tailored to fit a number of individual but similar equipment installations. Once developed, an individual general permit can be issued very quickly. Issuance of general permits is one of the key elements in enabling the revised permit program to be efficient. The individual costs of obtaining a general permit will be comparatively low since the development costs will be shared among all projected users.

**AS 46.14.215. TEMPORARY OPERATIONS** - This section is to provide flexibility to transportable facilities that relocate based on short term projects. The permit will authorize facility operation at a number of preset locations.

**AS 46.14.220. OBJECTION BY FEDERAL ADMINISTRATOR** - This language indicates that the Environmental Protection Agency has review authority on each and every operating permit and may stop permit issuance based upon specific legal inadequacies of a drafted permit. This is a mandatory provision if the state is to receive federal approval of the permit program. This feature only applies to operating permits, not construction permits.

**AS 46.14.230. DURATION OF OPERATING PERMITS** - The language specifies that all operating permits, except temporary operating permits, are to be issued for a fixed term of five years.

**AS 46.14.235. FEDERAL TERMINATION, MODIFICATION, OR REVOCATION AND REISSUANCE OF PERMITS** - This directs the department to take actions to avoid federal intervention on a permit.

**AS 46.14.240. PERMIT ADMINISTRATION FEES** - The language is developed on the policy premise that a cost generator is to be a cost bearer. By setting this fee rate on a basis of dollars per hour of agency service provided, accountability for cost control within government and the regulated community will provide a strong motivation for program efficiency. The permit administration fees are to recover the costs incurred by the agency in reviewing, issuing and maintaining the permit. The services listed in the section are the only services for which permit administration fees will be assessed.

**AS 46.14.250. EMISSION FEES** - In addition to the permit administration fee, each permittee is assessed an annual emission fee based upon the quantity of air contaminants emitted that year. The purpose of the emission fee is to distribute the

costs of performing those functions of the permit program that benefit or assist all permit holders, yet are not directly attributable to any single facility. In short, these are the indirect costs of the program and include costs such as rent, utilities, accounting, the small business assistance program and working with EPA to assure that new federal laws are reasonable for Alaska situations.

The initial fee is temporary. ADEC must research factors that will lead to fee equatibility and revise the fee prior to third year based upon its research published in a report. Thereafter, the agency must revisit the fee structure at least every three years.

**AS 46.14.255. INTEREST FOR NONPAYMENT** - This section allows the department to assess interest for late payment of permit fees based upon the rate of one percentage point above the prime interest rate.

**AS 46.14.260. CLEAN AIR PROTECTION FUND** - This section creates the necessary fund to receive the permit fees. A dedicated fund is required for federal approval of the permit program to assure that the monies are secured for the sole use of the air permit program.

**AS 46.14.270. SPECIAL ACCOUNT** - An account is established within the general fund to receive civil or criminal penalties, fines, assessments, damages, interest and attorney fees related to violations of air quality control laws.

**AS 46.14.275. TIMELY AND COMPLETE APPLICATION AS SHIELD** - The section creates the so called "application shield". The application shield becomes effective for a permit applicant once a complete application has been submitted in a timely manner. The section is the third of three necessary sections to create the application shield and associated issuance mechanism. Application shields are of critical importance during the initial phase of the permit program.

**AS 46.14.280. TERMINATION, MODIFICATION, REOPENING, OR REVOCATION AND REISSUANCE OF PERMITS BY THE DEPARTMENT** - The section has three subparts; one which describes the conditions under which the department may terminate, modify or revoke and reissue (revoke-reissue is one action) a permit. Other conditions describes which are grounds only for permit modification or revocation and reissuance, and subsection(c) describes the events under which a permit is reopened to incorporate changes in federal law.

**AS 46.14.285. AMENDMENT AND MODIFICATION OF PERMIT UPON REQUEST OF PERMITTEE** - The section delineates the various type of permit changes that can be accomplished upon request of a permittee. The language is directly linked to similar changes that are elaborated upon in federal regulations.

**AS 46.14.290. PERMIT AS SHIELD** - The section provides for a shield from litigation by third parties provided that the permittee complies with the terms of the permit. There are some limitations in federal law regarding activities that can be "shielded". The permit shield is optional, but considered important by the regulated community.

**AS 46.14.300. SMALL BUSINESS ASSISTANCE PROGRAM** - The small business assistance program is established as required by Section 507 of the Clean Air Act to assist affected small businesses in understanding and complying with the requirements of the Act. This language provides the ability to expand the program to other entities that do not meet the federal definition of a small business, but may need assistance.

**AS 46.14.310. POWER TO LIMIT SMALL BUSINESS ASSISTANCE PROGRAM** - The section allows the department to exclude a business facility or category of facilities from the assistance program if it is determined that they have sufficient technical or financial capabilities to meet the requirements of the Act. This language follows similar federal statute.

**AS 46.14.320. COMPLIANCE ADVISORY PANEL** - As required by the Act, a seven member panel is selected by the Governor, the Commissioner, and the Legislature. The panel meets at least annually and provides general direction to the small business assistance program while also fulfilling a federal function of reporting on the effectiveness of the assistance program and meeting requirements of the Paperwork Reduction, Regulatory Flexibility and Equal Access to Justice Acts.

**AS 46.14.400. LOCAL AIR QUALITY CONTROL PROGRAMS** - This section establishes that local programs are approved by the department through a cooperative agreement which delineates the responsibilities of both agencies. With affirmative agreement of the department, a municipality or local air quality district may establish more stringent requirements than the state if the local agency makes a finding that public health or air quality effects warrant the action. This provision does not apply to mobile source pollution control program of the local agency. Language in subsection (h) precludes local governments from collecting air permit fees. All fees would be collected by the state with financial assistance provided from the state to the participating local program.

**AS 46.14.410. INADEQUACY OF LOCAL PROGRAMS** - This section specifies the process for identifying and rectifying deficiencies in executing the terms of the interagency cooperative agreement.

**AS 46.14.500. AIR POLLUTION FROM OUTER CONTINENTAL SHELF ACTIVITIES** - This section would provide the ability for the department to regulate mineral and oil & gas extraction activities located between the coast and 25 miles

seaward. State authority is normally limited to that area within three miles of the coast. Section 328 of the Clean Air Act provides a mechanism to obtain delegation of federal authority and thereby extend the geographic range of authority for certain activities.

**AS 46.14.510. MOTOR VEHICLE POLLUTION** - The section brings language currently contained in AS 46.03.190 into the new Chapter 14.

**AS 46.14.515. INSPECTION** - The language specifies who may enter a facility and what that person may inspect or examine.

**AS 46.14.520. CONFIDENTIALITY OF RECORDS** - The language specifies the criteria that information must meet in order for it to be protected from disclosure.

**AS 46.14.525. PUBLIC RECORDS** - This section specifies that documents associated with the permit program are public records unless specifically protected as confidential.

**AS 46.14.530. STATE AND FEDERAL AID** - The language in this section is the principal authority for local programs to receive air permit funds collected by the state to support the staff and other expenditures of executing a permit program at the local level. The language also allows local programs to receive federal funds without approval of the department. Federal grant funds are expected to diminish as permit programs become self funded to meet the requirements of the Act.

**AS 46.14.540. AUTHORITY OF DEPARTMENT IN CASES OF EMERGENCY** - This section provides a mechanism for the Commissioner of ADEC to authorize the immediate operation of a source or facility either without a permit or in contravention with the terms of a permit when such actions are deemed necessary in a natural emergency event.

**AS 46.14.550. RESPONSIBILITIES OF OWNERS AND OPERATORS** - This section delineates that prior to permit issuance both the owner and the operator are responsible for compliance with air quality control requirements. Following permit issuance, only the facility operator is legally responsible.

**AS 46.14.560. UNAVOIDABLE MALFUNCTIONS AND EMERGENCIES** - This language provides that emissions in excess of allowable out-of-stack standards may not be subject to enforcement as a violation of the permit if the event was caused by an on-site emergency, malfunction or non-routine repair at a facility and the operator has taken certain actions to certify that the event was unavoidable.

**AS 46.14.900. LIMITATIONS** - This language brings forward existing law in AS 46.03.245 into the newly created Chapter 14.

**AS 46.14.990. DEFINITIONS** - Twenty four definition of terms are created for use in this act.

**Sections 3 through 14.**

Conforms existing statute to new citations created by this act.

**Section 15.**

Accomplishes the federally required civil prosecution penalties by amending existing state law.

**Sections 16 and 17.**

Conforms existing statute to new citations created by this act.

**Sections 18 and 19.**

These sections accomplish federally required changes which identify actions that are potentially subject to criminal prosecution and the potential penalties if found guilty in such prosecutions.

**Sections 20 through 25.**

Amends existing statute to conform to provisions and citations in this act.

**Section 26.**

Repeals existing statutes that are replaced or no longer required.

**Section 27.**

Repeals the existing statute authority to issue air quality permits, on the day following the day that new permit issuance authority is approved by the federal administrator.

**Section 28.**

**COMPLIANCE ADVISORY PANEL; INITIAL TERMS** - The section initiates the advisory panel of the small business assistance program with various term durations so as to accomplished staggered terms for panel members to retain "corporate" memory during periods of reappointments.

**Section 29.**

**REGULATIONS** - Regulations may not take effect until the corresponding enabling statute take effect.

**Section 30.**

Identifies those provisions of this act that take effect immediately.

**Section 31.**

Identifies those provisions of this act that take effect the day after the day the federal administrator approves the permit program. Delayed effectiveness is desired to allow the department and the regulated community time to prepare for the new program.

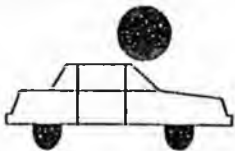


**DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION**

**Air Quality Management**



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



### Mobile Sources

Cold Start  
CO Standards  
Inspections

## EFFECTS OF 1990 AMENDMENTS



CLEAN UP POOR  
AIR QUALITY AREAS

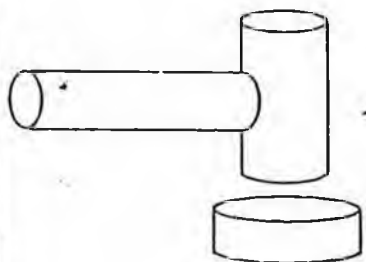
189  
HAZARDOUS  
AIR  
POLLUTANTS

### Clean Air Act Amendments

Nov. 15, 1990

### State Operating Permit Program

One Permit: All Requirements of Act  
Federal Emission Standards  
Technology to Reduce Hazardous Emissions  
Voluntary Emission Limits to Avoid Permits  
Compliance Monitoring and Reporting  
Public and EPA Review  
Administrative and Judicial Review of Actions



### Enforcement

State in Lead Role

~~ACID  
RAIN  
REDUCTIONS~~  
Alaska  
Exempt

Small Business  
Assistance Program

# WHO NEEDS AIR PERMITS

## 1. FACILITIES THAT EMIT 100 TONS PER YEAR

*Of Any Criteria Air Contaminant*

*( CO, SO<sub>2</sub>, NO<sub>2</sub>, Pb, PM, O<sub>3</sub> )*

## 2. FACILITIES THAT EMIT 10 TONS PER YEAR

*Of Any Hazardous Air Contaminant*

*OR*

*25 TPY Aggregate of Multiple Contaminants*

## 3. FACILITIES SUBJECT TO FEDERAL EMISSION LIMITS

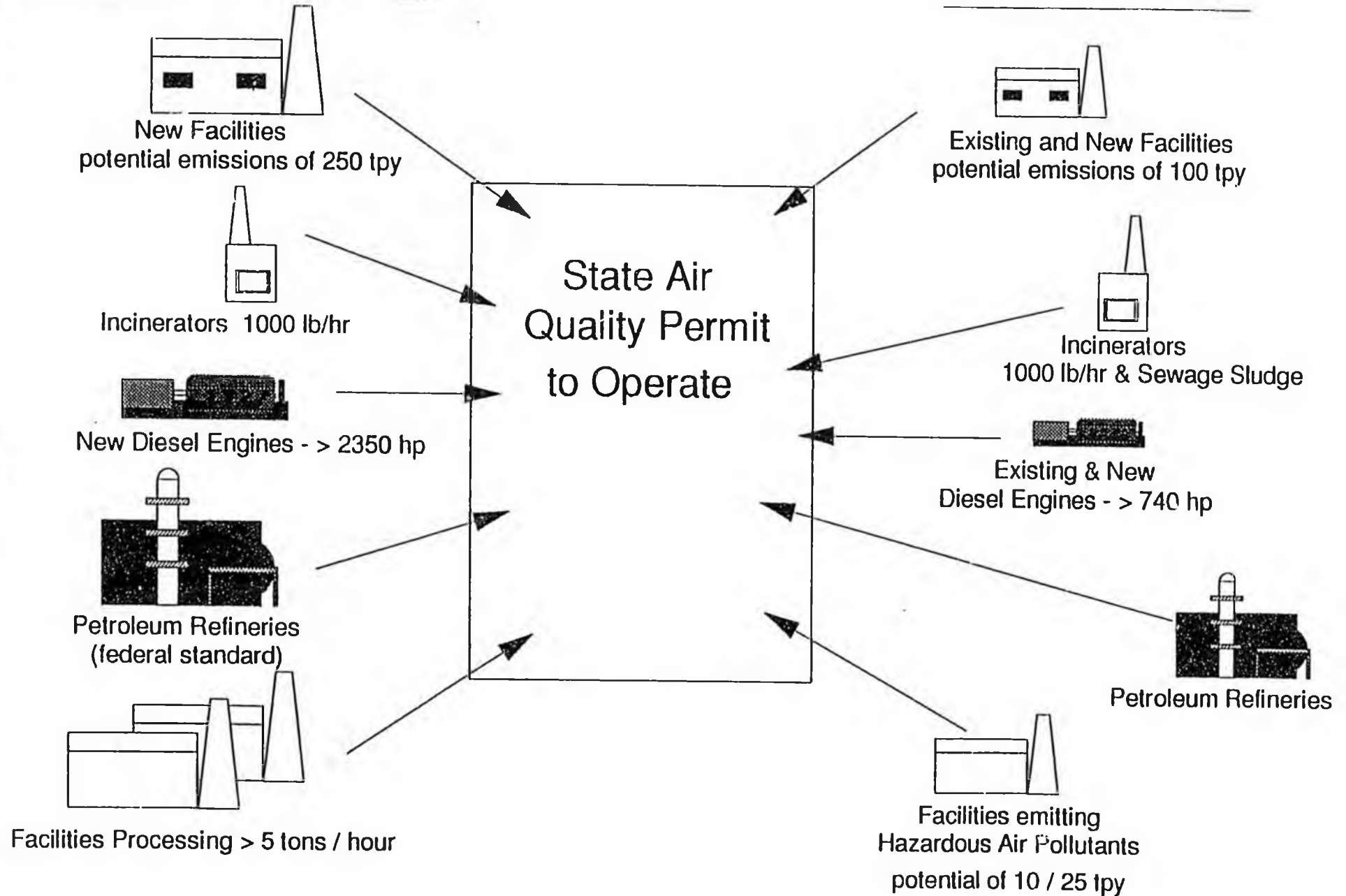
*New Source Performance Standards*

*Implementing Technology for Hazardous Emissions*

# WHO NEEDS AN AIR PERMIT ?

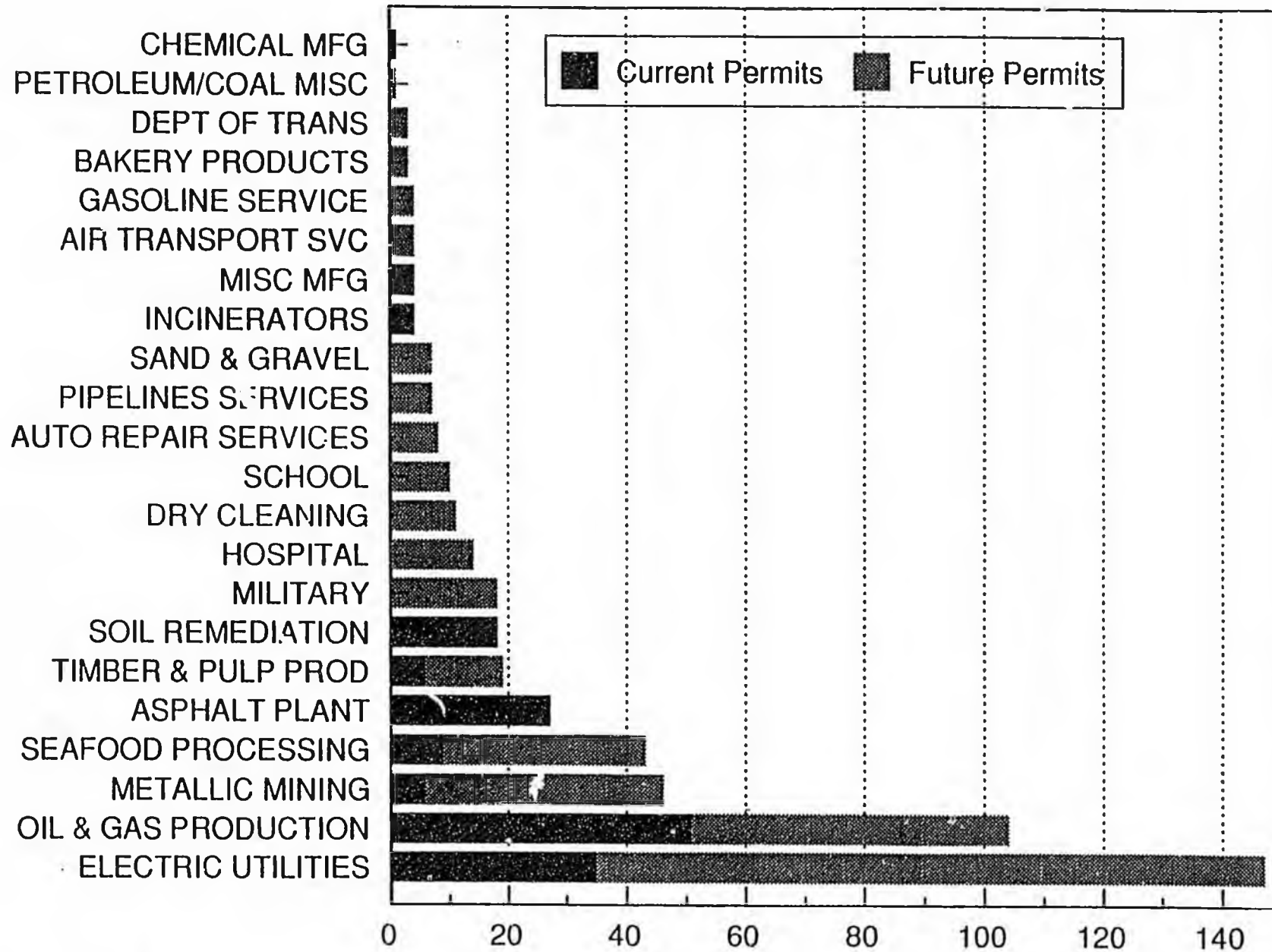
## EXISTING PERMIT PROGRAM

## 1990 CLEAN AIR ACT



# ALASKA

## Facilities Required to Have Air Permits by Facility Type



# FOCUS OF PERMIT RESTRUCTURING

## - RETAIN STATE JURISDICTION -

*Responsive to Public & Industry Needs*

*Prevent Federal Intervention*

## - FULL SERVICE ON AIR PERMITS -

*Single Permit \ All Requirements*

## - DESIGNED W/ CHECKS & BALANCES -

*Public Health Protection w/ Accountability for Good Science*

*Fee Structure that Stimulates Efficiency*

*Public Participation that's Timely & Time Certain*

*General Permits for Streamlined Issuance*

## - KNOWLEDGE AND UNDERSTANDING OF REQUIREMENTS -

*Explicit and Detailed Laws*

# AIR QUALITY PERMIT BILL

## ALASKA AIR STATUTES REQUIRED & ESSENTIAL FEATURES

## BILL SECTION TITLE

ALASKA AIR STATUTES REQUIRED & ESSENTIAL FEATURES	BILL SECTION TITLE
Exclusive Fund for Air Permit Program	Clean Air Protection Fund Special Account
Create Small Business Assistance Program Create Advisory Panel Provide Assistance to Larger Group	Small Business Assistance Program Power to Limit Program Compliance Advisory Panel
Modify Criminal Provisions and Fines	Criminal Penalties for Air Pollution
Construction Permits v. Operating Permits Agency/Operator Emission Limits to Avoid Need for Permit	Classification of Facilities or Sources; Reporting Permits for Construction, Modifications or Operations Responsibilities of Owner and Operator Facilities Requiring Permits Administrative Actions Regarding Permits Emissions Control Permit Program Regulations Air Pollution from Outer Continental Shelf Activities Authority of the Department in Cases of Emergency
General Permits	General Operating Permits
Flexibility for Permit Fee Structure	Permit Administration Fees Emission Fees
Ability to Implement New Federal Rules in Permits Reopening of Permits	Incorporated into other sections
Emission Limits Based on Health Risks or Available Technology	Incorporated into other sections
Local Governments to be Implementing Partners	Local Air Quality Control Program Inadequacy of Local Program State and Federal Aid
Administrative Penalties for Violations Deter EPA Intervention	Not in Bill
Public Involvement in Permits Public Review of Permits Appeal through Adjudication Judicial Review EPA Review Public to Petition EPA	Review of Permit Action  Objection by Federal Administration
Retain & Update Existing Statutes	

# CAA Deadlines & Sanctions

## DEADLINES

- 11/15/92 Submit Small Business Assistance Plan  
Submit SIP Revisions for Non-Attainment Areas
- 11/15/93 Submit State Operating Permit Program

## SANCTIONS

After 11/15/93 EPA may impose any of the following:

See CAAA 90 - Section 502(d)(2)(A)

- Prohibition on Federal Highway Funds statewide
- Require 2 to 1 offset of emissions for new sources in non-Attainment areas
- Withhold any Federal Air Grant Funds
- Prohibit expansion of airports in Non-Attainment areas

5/15/95 EPA must impose all of the following:

See CAAA 90 - Section 502(d)(2)(B)

- Prohibition on Federal Highway Funds statewide
- Require 2 to 1 offset of emissions for new sources in non-attainment areas
- Withhold any Federal Air Grant Funds
- Prohibit expansion of airports in Non-Attainment areas

11/15/95 EPA must implement Federal Permit Program

See CAAA 90 - Section 502(d)(3)

EPA Operating permits -

- Little consideration for Alaska-specific Concerns
- Federal program offers less operational flexibility
- Federal program has more facility reporting requirements
- No General Permits
- Will take longer to issue than State permit

EPA collects permit fees -

- Collected fees go to Federal government, not Alaska
- Federal Permit Fees likely to be higher than State Permit Fees
- Federal Permit Fees will not reduce program support from State General Funds

# PERMIT FEE DESIGN

## - " PERMIT ADMINISTRATION FEE " - \$ / hour

*Pay for Direct Services Provided*

*Low Demand - Low Costs / High Demand - High Costs*

*Agency Accountability w/ Evident Billings*

*Fee Rate Projected to be \$ 78 / hour*

## - " EMISSION FEES " - \$ / emission

*Pay for Intangible Benefits of Program*

*- reconcile fed laws to Alaska situations*

*- management control for consistency*

*- rent, utilities, accounting etc.*

*Policy Directive to Achieve " Equitable Apportionment "*

*between facility types & sizes*

*Interim Rate w/ Mandate for Further Research*

*Fee Rate Projected to be \$ 5 / Ton of Emission*

**AIR QUALITY LEGISLATIVE WORKING COMMITTEE**

**COMMITTEE MEMBERS**

1/28/93

NAME	AFFILIATION	REPRESENTING	CONTACT NO.
Lee Browning	Municipality of Anchorage	Alaska Municipal League	Phone 343-4928 Fax 343-6740
Steven Taylor	British Petroleum Exploration Inc.	Alaska Oil & Gas Assoc.	Phone 564-4037 Fax 564-5020
Harry Noah Gene Andrews (alternate)	Consultant	Council of Alaska Producers (mining trade assoc.)	Phone 265-3100 or 452-4653 Fax 265-3180 or 451-4305
John Iani Rick Lauber (alternate)	Pacific Seafood Processors Assoc.	Pacific Seafood Processors	Phone (206) 281-1667 or 586-6366 Fax (206) 283-2387 (Both) 463-5298
Linda Dianne Rabb	Rural Alaska Power Assoc.	Rural Electric Utilities	Phone 345-5771 Fax 345-5878
Carl Harmon	Chugach Electric Association	Large Electric Utilities for Alaska Rural Electric Cooperative Assoc. (ARECA)	Phone 762-4739 Fax 562-0027
Larry Opperman	U.S. Air Force	U.S. Air Force	Phone 552-7753 Fax 552-1533
Aimee Boulanger	Alaska Center for the Environment	Environmental Advocacy Groups for the Alaska Environmental Lobby	Phone 274-3621 Fax 274-4145
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Tom Chapple	Alaska Dept. of Environmental Conservation (ADEC)	ADEC	Phone 465-5100 Fax 465-6129

# **SUMMARY**

of the

## **1990 CLEAN AIR ACT**

Prepared  
September 16, 1992  
by  
Alaska Department of Environmental Conservation

On November 15, 1990, President Bush signed into law amendments to the federal Clean Air Act (Act). The revised law initiated sweeping changes in air quality management throughout the nation. The summary below will provide you with some basic information on this complex law.

### **TITLE I - AIR POLLUTION PREVENTION AND CONTROL**

*Section 109 of the Act provides for the establishment of National Ambient Air Quality Standards. Primary standards are designed to "...protect public health with an adequate margin of safety." Secondary standards "...protect the public welfare from any known or anticipated adverse effects associated with the presence of such air pollutants in the ambient air." To date, National Ambient Air Quality Standards exist for ozone, carbon monoxide, nitrogen dioxide, sulfur dioxide, particulate matter, and lead.*

*Section 110 of the Act requires states to submit a plan to EPA "...which provides for implementation, maintenance, and enforcement..." of the ambient air quality standards. This plan is often referred to as the State Implementation Plan (SIP). In Alaska, this information is contained in the State Air Quality Control Plan and the Alaska Air Quality Control Regulations.*

*Section 111 of the Act provides for the establishment of Standards of Performance for New Stationary Sources (NSPS). These standards establish emission limitations for specific air pollution sources, or categories of sources, based upon the use of feasible technology. Each source category standard is updated every few years to reflect technological advances.*

*Section 112 of the Act (Title III of the 1990 Amendments) provides for the establishment of National Emissions Standards for Hazardous Air Pollutants (NESHAPS). Prior to 1990, this provision of law regulated specific industrial processes which emitted any of eight hazardous air pollutants. As part of the 1990 Act, 189 hazardous air pollutants were established by Congress. EPA is required to develop a list of categories of stationary sources that emit the listed pollutants. In developing this list, EPA must consider the*

quantity of pollution typically emitted and the potential danger to public health. The Act then requires EPA to establish maximum achievable control technology (MACT) emission or work practice standards for these selected source categories over a period of twelve years. EPA is also establishing "area source" categories which will be required to apply generally available control technology (GACT) to reduce emissions. The list of hazardous air pollutants may be revised by EPA. In addition, any person may petition EPA to modify the list of hazardous air pollutants.

Section 113 of the Act gives EPA federal enforcement authority when the provisions of a permit or applicable implementation plan are violated and states fail to adequately initiate enforcement. EPA's authority varies depending upon the violations, but generally includes: issuing orders, assessing administrative penalties, and bringing civil or criminal action.

Part C of Title I maintains the previously established program for the Prevention of Significant Deterioration (PSD). This program is intended to prevent long term degradation of air quality in regions where the air quality is currently good. This will be achieved through a permit program that requires new industry sources to install Best Available Control Technology (BACT) to reduce out of stack emissions and sets a "cap" on ground level pollution increases. A permit can not be issued to a project if it causes a violation of either the National Ambient Air Quality Standards or the air quality increment caps.

Part D of Title I contains the requirements for implementation plans for regions not in attainment with the National Ambient Air Quality Standards. It sets the groundwork to help nonattainment regions reach attainment with the air quality standards. Part D also contains a requirement for the review of new or modified major stationary sources such as power plants and oil refineries. Both pre-construction permits and operating permits are required for major sources located within nonattainment areas. In Alaska, Anchorage and Fairbanks are nonattainment for carbon monoxide, with Eagle River and the Mendenhall Valley of Juneau being nonattainment for airborne particulate matter.

## **TITLE II - NATIONAL EMISSION STANDARDS ACT**

### **Part A - Motor Vehicle Emission Standards**

Section 202 of the Act provides for the establishment of emission standards for automobiles and light duty trucks. The standards become progressively more stringent with the newer model vehicles. In the future, Alaska will be affected by cold weather carbon monoxide standards for new vehicles. Tailpipe standards can only be set by the federal government (California excepted) and can potentially address other mobile sources, including airplanes and ships.

Section 207 of the Act provides for the establishment of an Inspection and Maintenance (I & M) program in carbon monoxide nonattainment areas to assure proper maintenance

*of vehicular pollution control equipment. Automobiles, trucks, and vehicles up to 12,000 pounds laden weight in Anchorage and Fairbanks are subject to section 202 and are required to pass an emission inspection every year.*

*Section 211 of the Act provides for the regulation of fuels. Reformulated fuel programs, such as oxygenated gasoline (Oxy-Fuels) and low sulfur diesel fuel, are intended to reduce tailpipe emissions through more complete combustion of the fuel (oxy-fuel) or by reducing the contaminant pollutant in the fuel (sulfur). The Oxy-Fuels program currently being implemented in Anchorage and Fairbanks should bring these areas into attainment with the national and state ambient air quality standard for carbon monoxide.*

*Part B provides for the establishment of aircraft emission standards and enforcement. Section 231 provides for: the analysis of the effect of aircraft emissions on air quality, "...the technological feasibility of controlling such emissions"; and it provides for the development of aircraft emission standards.*

*Part C establishes clean fuel vehicle programs which encourages alternative fuels, such as propane or compressed natural gas, and flexible-fuel and dual-fuel vehicles.*

### **TITLE III - GENERAL**

*Title III provides for the general administration of the Act, including Emergency Powers (section 303), Citizen Suits (section 304), Judicial Review (section 307), and Economic Impact Analysis and Assessment (sections 312 & 317, respectively).*

### **TITLE IV - ACID DEPOSITION CONTROL**

*Title IV establishes a program to reduce acid rain deposition. Emission of sulfur dioxide and oxides of nitrogen, mostly from large fossil fuel fired electric utilities, will be controlled during the implementation of a two phase emission reduction program. Title IV does not apply to Alaska, Hawaii, Guam, or Samoa because of the physical distance of these states from the problem areas of New England, Eastern Canada and selected western mountain regions.*

### **TITLE V - PERMITS**

*Sections 502, 503, & 504 of the Act provide for the establishment of uniform, nationwide air pollution permitting programs directed by the states. All major sources of air pollution will be required to obtain air permits under the new program.*

*A major source is either: a facility which has the potential to emit 100 tons per year or more of a criteria air pollutant (sulfur dioxide, carbon monoxide, nitrogen oxides, lead, particulate matter or ozone via hydrocarbon emissions); a facility which has the potential*

*to emit 10 tons per year or more of any hazardous air pollutant, or 25 tons per year or more of any combination of hazardous air pollutants; or a facility for which federal emissions standards exist under the New Source Performance Standard's provision of the Act.*

*States must develop an air pollution permitting program complying with the provisions of Title V, or risk losing jurisdiction of their air quality resources. Alaska is currently in the process of developing an air quality statutory bill. New statutory authority is necessary before compliance with Title V can be achieved.*

*Section 507 provides for the establishment of a Small Business Stationary Source Technical and Environmental Compliance Assistance Program. The small business assistance program (SBAP) is envisioned to take a pro-active role in helping small businesses understand and comply with the complex provisions of the Act.*

## **TITLE VI - STRATOSPHERIC OZONE PROTECTION**

*Title VI provides the framework for reducing emissions of ozone depleting chemicals, such as refrigerants, consistent with the Montreal Protocol.*

*Section 602 of the Act lists Class I and Class II substances. Class I substances include many of the chlorofluorocarbons (CFC's), halons, carbon tetrachloride, and methyl chloroform. Class II substances include many of the hydrochlorofluorocarbons (HCFC's).*

*Section 604 details the scheduled phase-out of production and consumption of Class I substances, while section 605 details the scheduled phase-out of production and consumption of Class II substances. Section 608 prohibits any person from knowingly venting refrigerants to the atmosphere. It also mandates the regulation of servicing and disposal of refrigeration and air conditioning units. Section 609 provides for regulating the service of automotive air conditioners. Other portions of Title VI require regulation of nonessential uses of products containing Class I substances, and provide for the identification of alternatives to the use of ozone depleting substances.*

# FISCAL NOTE

For Information Purposes Only (Note 1)

**STATE OF ALASKA  
1993 LEGISLATIVE SESSION**

BILL NO. HB-167

Revision Date: 5-Mar-93  
 Title: Alaska Air Permit Statutes  
 Sponsor: Representative Mark Hanley  
 Requestor: House Judiciary Committee

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

COMPONENT SERIAL NO. 1428

**EXPENDITURES/REVENUES:**

(Thousands of Dollars)

OPERATING	FY 94(Note 1)	FY 95(Note 2)	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	0.0	3,125.2	3,125.2	3,125.2	3,083.1	3,083.1
TRAVEL	0.0	284.6	287.9	291.2	334.2	334.2
CONTRACTUAL	0.0	106.8	495.1	726.5	259.6	259.6
SUPPLIES	0.0	73.7	75.4	77.2	65.8	65.8
EQUIPMENT	0.0	156.8	0.0	0.0	0.0	0.0
LAND&STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>3747.1</b>	<b>3983.6</b>	<b>4220.1</b>	<b>3742.7</b>	<b>3742.7</b>

CAPITAL						
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REVENUE						
FUND SOURCE: 1005	0.0	3747.1	3983.6	4220.1	3742.6	3742.6

**FUNDING:**

1002 FEDERAL RECEIPTS						
1003 GF MATCH						
1004 GF						
1005 GF/PROGRAM RECPT	0.0	3747.1	3983.6	4220.1	3742.7	3742.7
1006 GF/MHTIA						
OTHER						
<b>TOTAL</b>	<b>0.0</b>	<b>3747.1</b>	<b>3983.6</b>	<b>4220.1</b>	<b>3742.7</b>	<b>3742.7</b>

**POSITIONS:**

FULL-TIME	(Note 3)	0.0	22.4	22.4	22.4	21.7	21.7
PART-TIME							
TEMPORARY							

Estimate of current year (FY93) impact: \$ 0

<b>ANALYSIS:</b> (See attachment)	
Note 1:	FY 94 permit program to have no funding changes relative to FY 93, as permits will not begin to be issued until 1995.
Note 2:	For FY 95 and beyond, federal law requires the permit program be 100% funded by program receipts.
Note 3:	Indicates net increase in positions relative to FY 93.

Prepared by: Leonard D. Verrelli, Chief *Leonard D. Verrelli* Phone: 465-5100  
 Division: Environmental Quality, Air Quality Management Date: 3/5/93

Approved by Commissioner: Janice Adair, Assistant Commissioner *Janice Adair*  
 Agency: Department of Environmental Conservation Date: 3/8/93

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

**1993 AIR PERMIT BILL FISCAL NOTE  
SUPPLEMENTARY EXPLANATION**

Title V of the 1990 Clean Air Act (the Act) requires each state to develop and implement a permit program under the approval and direction of the U.S. Environmental Protection Agency. **Though Alaska currently maintains an air quality permit program, the mandates imposed by the Act are expected to result in a substantially increased workload for ADEC.** The Act also mandated that each state collect fees from permittees necessary to fund the total direct and indirect costs of the permit program.

ADEC performed a comprehensive analysis during the fall of 1992 for the purpose of estimating the staff and budget increases over FY 93 due to implementing an approvable Title V permit program. The findings of this analysis are presented in a document entitled "Proposed Permit Program - Estimated Budget and Staffing," a copy of which is available from the Air Quality Management Section at ADEC. This analysis also provides estimates of fees which will be charged to permittees for the purpose of funding an approvable program. The enclosed spreadsheets on page 4 and 5 reflect the findings of this analysis and document the assumptions used to calculate the entries in the Air Permit Bill's Fiscal Note.

**ADEC expects that the number of permitted facilities will increase from the current of 175 to 450.** The Act requires that each state permit all facilities within three years of starting a permit program. ADEC plans to distribute the permitting workload equally over the first three years, so that a stable number of permitting engineers are required. In the fourth year of the permit program, the permitting workload will decrease since all existing facilities should be permitted. The inspection workload will increase as more facilities are permitted, and is expected to stabilize in year four when all facilities are permitted. ADEC plans to reassign staff, who no longer will be needed in permitting, to inspection duties. In addition, ADEC plans to contract some inspection work to private consultants. These measures are intended to avoid hiring personnel on a temporary basis; therefore stabilizing the number of personnel employed in the permit program.

The line item entries in the Operating block of the Fiscal Note reflect the total costs of the Title V air permit program for FY 95 and beyond. The budget line item allocations for ADEC's FY 93 permit program are listed at the top of page 4. **ADEC's current permit program employs 21.5 FTE (full-time equivalents) at a total cost of \$1.922 million in FY 93.** The existing program is funded by federal grant, state matching monies and program receipts. **New federal law requires that the permit program be 100 % funded by program receipts managed in a dedicated fund.** Following federal approval of the new program, current federal grant and state matching monies will not be used to support the permit program portion of the entire budget for the air quality management section.

Since the permit program established pursuant to this bill is not expected to be implemented until FY 95, no new costs are to be incurred in FY 94. In FY 95, an additional 22.4 FTE over the FY 93 will be required for implementation of the permit program. The majority of the staff will be involved with permit issuance tasks. This is the only year ADEC expects to hire employees for this permit program.

The following comments apply to the operating line items for FY 95 to FY 99.

- a. Travel costs are estimated from historical records and projections based upon the number of permittees who will be subject to the permit program. Travel cost increase from FY 95 to 98, since both the number of permittees and the number of required inspections increase as ADEC issues permits to facilities which are not currently permitted. Travel costs stabilize in FY 98 when the program enters the continuation phase.
- b. Contractual costs increase from FY 95 to FY 97 because ADEC plans to secure contracts with consultants to perform some of the required facility inspections. Contracting this excess inspection workload will avoid the need to hire state employees on a temporary basis. Inspection contracting may cease in FY 98 when the number of employees involved in permitting will decline and these employees will be shifted to the inspection group.
- c. Supply costs increase from FY 95 to FY 97 due to the increase in costs associated with permitting such as public hearings and advertisement, and supplies needed for the increased number of facilities to be inspected. The costs stabilize in FY 98 as the program enters the continuation phase.
- d. Equipment costs are incurred in FY 95 when ADEC employs the additional staff needed to implement the permit program. Costs are necessary to purchase employee workstations and are figured at \$7000 per employee. No employees are expected to be hired in other fiscal years.

1993 AIR BILL FISCAL NOTE BACK-UP

FY 93 TOTAL PERMIT PROGRAM COSTS

Pers. Services	Travel	Contractual	Supplies	Equipment	FTE
1390.4	130.9	294.3	49.5	57.2	21.5

FY 93 TOTAL 1922.3

FY 95 TOTAL PERMIT PROGRAM COSTS

Group	Pers. Services	Travel	Contractual	Supplies	Equipment	FTE
Per Ton Services	917.0	89.7	31.0	21.3	N/A	12.7
Permits	1558.5	50.0	54.2	29.0	N/A	22.3
Compliance	536.1	124.8	18.2	9.8	N/A	7.5
Monitoring	113.5	20.1	3.4	13.6	N/A	1.4
Totals	3125.2	284.6	106.8	73.7	156.8	43.9

FY 95 TOTAL 3747.1

FY 96 TOTAL PERMIT PROGRAM COSTS

Group	Pers. Services	Travel	Contractual	Supplies	Equipment	FTE
Per Ton Services	917.0	89.7	76.5	21.3	0.0	12.7
Permits	1558.5	50.0	133.9	29.0	0.0	22.3
Compliance	536.1	124.8	276.4	9.8	0.0	7.5
Monitoring	113.5	23.4	8.4	15.3	0.0	1.4
Totals	3125.2	287.9	495.1	75.4	0.0	43.9

FY 96 TOTAL 3983.6

1993 AIR BILL FISCAL NOTE BACK-UP

FY 97 TOTAL PERMIT PROGRAM COSTS

Group	Pers. Services	Travel	Contractual	Supplies	Equipment	FTE
Per Ton Services	917.0	89.7	76.5	21.3	0.0	12.7
Permits	1558.5	50.0	133.9	29.0	0.0	22.3
Compliance	536.1	124.8	507.8	9.8	0.0	7.5
Monitoring	113.5	26.7	8.4	17.1	0.0	1.4
Totals	3125.2	291.2	726.5	77.2	0.0	43.9

FY 97 TOTAL 4220.1

FY 98 TOTAL PERMIT PROGRAM COSTS

Group	Pers. Services	Travel	Contractual	Supplies	Equipment	FTE
Per Ton Services	917.0	89.7	76.5	21.3	0.0	12.7
Permits	931.1	35.0	78.6	13.2	0.0	13.1
Compliance	1121.5	179.5	96.1	12.5	0.0	16.0
Monitoring	113.5	30.0	8.4	18.8	0.0	1.4
Totals	3083.1	334.2	259.6	65.8	0.0	43.2

FY 98 TOTAL 3742.6

FY 99 TOTAL PERMIT PROGRAM COSTS

Group	Pers. Services	Travel	Contractual	Supplies	Equipment	FTE
Per Ton Services	917.0	89.7	76.5	21.3	0.0	12.7
Permits	931.1	35.0	78.6	13.2	0.0	13.1
Compliance	1121.5	179.5	96.1	12.5	0.0	16.0
Monitoring	113.5	30.0	8.4	18.8	0.0	1.4
Totals	3083.1	334.2	259.6	65.8	0.0	43.2

FY 99 TOTAL 3742.6

Rep. Brian Porter, Chairman

# House Judiciary Committee

Date: April 1, 1993

Place: Capitol Room 120

Subject of Meeting:

HB 167 Air Quality Control Program

Please Print Name	Representing	Business/Personal Mailing Address	Zip	(H) Phone	(W) Phone	Do you Want to Testify?	Which Subject/ Which Bill?
Tom Chapple	ADEC	410 W. Longley				Y N	
JEFF OTTEN	DOTPF	3132 CHANNEL			10954	(Y) N	
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	

Rep. Brian Porter, Chairman

HB 188 Forfeiture of Property

# House Judiciary Committee

**Date:** April 6, 1993  
**Place:** Capitol Room 120

**Subject of Meeting:** HB 167 Air Quality Control  
HB 93 VPSO Program; HB 119 Use of Day Fines

Please Print Name	Representing	Business/Personal Mailing Address	Zip	(H) Phone	(W) Phone	Do you Want to Testify?	Which Subject/ Which Bill?
Larry LaBolle	Rep. Foster	State Capitol, Juneau	99801	<del>335</del>	3789	(Y) N	HB 93
✓ Russell Heath	AK ENVIRONMENTAL LOBBY	PO Box 22151 Juneau AK	99802		463-3366	(Y) N	HB 167
Margot Kauth	Law - Crim	110300 - 99811			5-3428	(Y) N	HB 167
Shelley K. Owens	AK CIVIL LIBERTIES UNION	1755 FRANKLIN ST SUITE 312 JUNEAU	99801		463-4166	(Y) N	HB 188
✓ Resa Terrel	NFIB	9159 Skywood Lane	99801		789-4278	(Y) N	HB 167
* Tom Chapple	ADEC	410 W. Houghton	99811			Reference Only Y N	HB 167
Margaret Pugh	Rep. Fran Ulmer					Y N	119
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	

04/06/93  
13:28:21

LEGISLATIVE TELECONFERENCE NETWORK SYSTEM  
PARTICIPANT LIST (ALL PARTICIPANTS)  
SCHEDULED FOR: 04/06/93 13:00 TO 15:00  
HOUSE JUDICIARY

LTN1150  
BY:ANC  
FOR:ANC

LOCATION: ANCHORAGE

- HB 93
- HB 93 ✓
- HB 188
- HB 167 ✓
- HB 167 ✓
- HB 167 ✓

CAPT

- SHAROLYN
- THOMAS
- PAUL
- AIMEE
- CLAUDIA
- CHERYL

- KRAUSE
- STEARNS
- HARRIS
- BOULANGER
- ECHAVAMA
- RICHARDSON

- DEPT P.S.
- TROOPERS
- AK CNTR ENVIRON

- OBSERVE
- TESTIFY
- TESTIFY
- TESTIFY
- TESTIFY