

AIR

QUALITY

REGS

House Resources Committee Hearing on Air Quality Regulations
Friday, February 9, 1996 9:00am
Speaking Notes for John Stone, ADEC

I. Title V Permits Program Status with EPA

- A. I am providing a copy of EPA's February 8 letter to the ADEC in which EPA states that Alaska's Title V program does not meet the minimum federal requirements.
- B. I am also providing you a copy of EPA's January 18, 1996 list of deficiencies in Alaska's Title V program.
- C. Several of the deficiencies must be addressed before EPA can approve Alaska's Title V program. *CL 19 AAC 50*
- D. ADEC plans to propose Title V regulation changes to address these deficiencies next week, and accept public comment for 30 days.
- E. The remaining Title V deficiencies do not have to be addressed before securing EPA approval of Alaska's Title V program, however they will be addressed by ADEC over the next year.

II. Alaska Stakeholder's Coalition (ASC) Proposal

- A. The Alaska Stakeholder's Coalition submitted a proposal to ADEC for addressing their concerns on January 26, 1996. I have enclosed the proposal.
- B. I am providing you a copy of Commissioner Brown's February 8 response to the ASC proposal. ADEC agreed to address ASC's concerns, however we can not meet the tight schedule proposed by ASC. The Open Meetings Act notice requirements and the work that must be done to address ASC's concerns and federal approvability require more time than allowed for in the ASC proposal. We have committed to work as quickly as possible to address ASC's concerns.
- C. We are awaiting a response from the ASC on Commissioner Brown's counter-proposal. If ASC agrees, we will hold a meeting as quickly as possible, no later than the end of February.
- D. In this first meeting, we plan to prioritize ASC's concerns, schedule additional meetings, and discuss how the meetings will work.

III. The Interior Coal-Burners Excess Emissions Issue

- A. The Coal Burners Group have requested changes to Alaska's emission standards so they can comply with the standards.
- B. I am providing a copy of our August 25, 1995 letter to Kathryn Lamal of GVEA describing how the coal burners could develop a new standard for federal approval.
- C. In addition, I am providing our December 4, 1995 Guide that describes how a member of the public, including operators of permitted facilities, can request changes to Alaska's federally-approved emission standards.
- D. It is our understanding that the coal burners are determining the extent of their noncompliance with the standards. This analysis is a prerequisite to determining how to set a new standard.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, Washington 98101

February 8, 1996

Representative Joe Green
Alaska State Legislature
State Capitol (MS 3100)
Juneau, AK 99801-1182

Dear Representative Green:

This letter is intended to follow-up on questions raised during the recent House Resources Committee meeting regarding the State of Alaska's Air Quality Program. Specifically, one of the major issues being discussed was whether ADEC's proposed program was more stringent than it needed to be to receive approval from the U.S. Environmental Protection Agency (EPA).

I have attached a February 8, 1996, letter from our Region 10 Office of Air which confirms that the State of Alaska's currently proposed program is not more stringent than the federal requirements. In fact, the State's program is less stringent in many areas, some of which, if not corrected, will jeopardize federal approval.

I hope this information will remove any confusion regarding EPA's position on this matter. We appreciate the opportunity to provide input to your deliberations. Please contact me if we can be of any further assistance.

Sincerely,


Steven A. Torok
EPA Senior Representative



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, Washington 98101

Reply To
Attn Of: OA-101

FEB 08 1996

Len Verrelli, Director
Division of Air and Water Quality
Alaska Department of Environmental Conservation
410 Willoughby, Suite 105
Juneau, AK 99801-1795

Dear Mr. Verrelli:

The purpose of this letter is to clarify that Alaska's Title V program is not more stringent than the federal requirements. EPA's review of the Alaska Title V program submittal identified many areas in which the Alaska program differed from the federal requirements and which, make the Alaska program less stringent than the federal program.

If the Alaska Title V program were more stringent or at least as stringent as the federal program, then EPA would be drafting a Federal Register notice granting full approval of the Alaska program. This is not the case. In my letter to you of January 18, 1996, I specifically identified as disapproval and interim approval issues those numerous provisions of the Alaska program that are significantly less stringent than is required by the federal Clean Air Act and its implementing regulations. Taken as a whole, the Alaska Title V program is clearly LESS stringent than federal law requires.

I hope that this information allays concerns that we have heard expressed that the Alaska program is inappropriately more stringent than EPA requires. If you have any questions please call me at (206) 553-1189 or you may call Elizabeth Waddell, of my staff, at (206) 553-4303.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bonnie Thie".

Bonnie Thie, Manager
Alaska-Washington Air Unit

cc: Steve Torok



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, Washington 98101
January 18, 1996

Reply To
Attn Of: AT-082

Leonard Verrelli, Director
Division of Air & Water Quality
Department of Environmental Conservation
410 Willoughby Avenue
Juneau, AK 99801-1795

Re: Alaska's Title V Program

Dear Mr. Verrelli:

Region 10 has nearly completed the regional review of Alaska's title V and section 112(1) submittal. The documents received thus far from your office show that Alaska has completed most of the elements necessary for an operating permits program under the federal Clean Air Act. Accordingly, the Region is working on finalizing the draft Federal Register notice proposing action on Alaska's submittal for review by EPA Headquarters. However, our regional review has identified a number of potential issues with the Alaska program submittal. The purpose of this letter, therefore, is to (1) notify you of several issues that EPA believes will require disapproval of the Alaska title V and 112(1) program if they are not addressed before EPA takes final action; (2) request a written commitment from the State to resolve the disapproval issues promptly; (3) notify you of the issues that Region 10 believes will require interim rather than full approval, even if the disapproval issues are addressed; and (4) request confirmation of EPA's understanding of certain implementation issues regarding Alaska's title V program.

Attachments to this letter describe issues relating to Alaska's title V program that have been identified by the regional staff. Because Region 10 has not yet received the final versions of the Alaska regulations, however, neither the Region nor EPA headquarters has completed their reviews. The attachments and the issues in each are summarized below:

Attachment 1 to this letter contains a list of issues which Region 10 believes will require disapproval of Alaska's title V program if they are not resolved before EPA takes final action on Alaska's submittal.

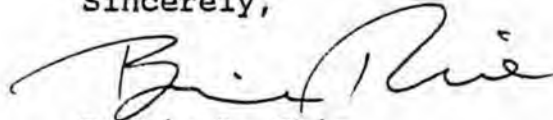
Attachment 2 contains a list of issues which EPA believes will require disapproval of Alaska's section 112(1) submittal if they are not resolved before EPA takes final action on Alaska's submittal.

REC-1
JAN 24 1996
State of Alaska
Dept. of Environmental Conservation
Air & Water Quality Division

Region 10 believes that the State can resolve the disapproval issues identified in Attachments 1 and 2 before EPA takes final action on Alaska's submittal. Region 10, therefore, is drafting the Federal Register notice in the alternative: the notice will propose disapproval of Alaska's submittal in the alternative with interim approval should Alaska complete the identified changes to its rules prior to final action by EPA on the submittal. In order to propose interim approval in the alternative, however, EPA must receive a commitment letter from the State along with the final version of the regulations. The letter needs to address the disapproval issues in order to complete the Federal Register docket, thereby allowing publication of the alternative proposals in the Federal Register.

If you any questions regarding the enclosed attachments, please call David Bray at (206) 553-4253 or Julie Vergeront at (206) 553-1497.

Sincerely,



Bonnie L. Thie
Alaska Washington Unit Supervisor

ATTACHMENT 1
Proposed Title V Disapproval Issues

Region 10 believes the provisions of Alaska's title V program discussed below currently require disapproval of the program for the following reasons.

1. **Applicability.** Section 502(a) of the Act and 40 CFR 70.3 require, among other things, that a State program permit all major sources as defined in section 112 or parts C and D of title I of the Act. Although the Alaska program does not include a definition of the term "major source," it requires title V permits for facilities that emit, or have the potential to emit, more than specified tons per year thresholds of regulated air contaminants. The Alaska definition of "facility" and the tons per year thresholds conform to the requirements of the Act and part 70. However, the Alaska definitions of "potential to emit" and "volatile organic compounds," a "regulated air contaminant," which are necessary to determine the sources subject to the Alaska title V program, have the effect of excluding certain sources from the obligation to obtain a title V permit.

The Alaska definition of "potential to emit" as expanded and clarified in 18 AAC 50.210, is inconsistent with the EPA definition in 40 CFR 70.2 in two respects. First, the Alaska definition does not require that only limitations on the capacity of a source to emit a pollutant that are enforceable as a practical matter may be considered in determining a source's potential to emit. Rather, the Alaska program would allow any provision in Alaska's rules or any condition of a permit to be considered even if the restriction is not enforceable as a practical matter, contrary to the decision in United States v. Louisiana-Pacific Corporation, 682 F. Supp. 1122 (D. Colo. 1987) and 682 F. Supp. 1141 (D. Colo. 1988).

Second, EPA's regulations require that fugitive emissions be included in a facility's determination of potential to emit for certain specified source categories (see definition of "major source" in 40 CFR 70.2). Although the Alaska rules similarly require the inclusion of fugitive emissions, the Alaska rules limit this requirement by stating that fugitive emissions must be included only if "reasonably quantifiable." EPA's part 70 regulations do not contain this limitation. The parallel provision in EPA's regulations for the prevention of significant deterioration (PSD) program does state that only "quantifiable" fugitive emissions must be included in determining a source's potential to emit (see 40 CFR 51.166(i)(4)(ii)), but no EPA regulations defining "potential to emit" include the qualification that only "reasonably quantifiable" fugitive emissions must be included. EPA believes it is acceptable for a State to require the inclusion of only "quantifiable" fugitive emissions, but believes that the further qualification that only "reasonably quantifiable" fugitive emissions be included could have the effect of impermissibly excluding fugitive emissions from the determination of a facility's potential to emit,

particularly where, as is the case in Alaska, it is completely unclear who determines whether emissions are "reasonably quantifiable."

A final problem with the applicability criteria in Alaska's title V regulations stems from the Alaska definition of the term "VOC or volatile organic compound" (18 AAC 50.990(92)). The Alaska definition is inconsistent with EPA definition in 40 CFR 51.100(s) in that: (1) it excludes a compound that has not been determined by EPA to be one that has negligible photochemical reactivity; (2) it fails to exclude many compounds that EPA has already determined to have negligible photochemical activity; and (3) it fails to include the requirements for testing and quantifying compounds before they can be excluded from a facility's emissions calculations. Although the effect of the Alaska definition would be to require some sources to include compounds that EPA has excluded, the Alaska definition would also impermissibly allow sources to exclude a compound that EPA's definition would include or to claim exclusions without adequate quantification.

In summary, because the Alaska rules would allow inappropriate conditions to be used in determining a facility's potential to emit, would allow quantifiable fugitive emissions to be excluded in determining a sources potential to emit, and would allow sources to exclude certain compounds from being considered VOC's, EPA is proposing to disapprove the Alaska title V program because it would not ensure that all major sources, as defined in 40 CFR 70.2, would be required to obtain title V permits. Therefore, EPA proposes to require, as a condition of interim approval, that Alaska demonstrate to EPA's satisfaction that its title V program covers all "major sources" as defined in 40 CFR 70.3.

2. Permit Applications. Section 502(b)(1) of the Act and 40 CFR 70.5 specify minimum requirements for permit applications. Although the Alaska Statutes state that the State regulations must include a standard permit application form that meets the requirements of part 70, the Alaska regulations fail to require permit applications to include much of the information required by 40 CFR 70.5. Specifically, the Alaska regulations fail to require a description of the source's processes and products by Standard Industrial Classification Code (40 CFR 70.5(c)(2)), fail to require submittal of most of the emissions-related data required by 40 CFR 70.5(c)(3) (emissions rates; fuels, fuel use, raw materials, production rates, and operating schedules; identification and description of pollution control equipment and monitoring devices; etc.), and fail to include a certification of compliance with all applicable requirements (40 CFR 70.5(c)(9)(i)).

In addition, the Alaska provisions for "insignificant sources" fail to meet the requirements of 40 CFR 70.5 that "an application may not omit information needed to determine the applicability of, or to impose, any applicable requirement" (i.e., the "applicable requirements gatekeeper" for insignificant emission units). The Alaska rules only require that the

application include a statement that the facility contains one or more additional small sources subject to 18 AAC 50.055, 18 AAC 50.070, or 18 AAC 50.075. See 18 AAC 50.335(e)(7). However, the emission standards and requirements in these sections are not generally applicable standards that apply to generically to all sources, including insignificant sources, but rather, are unit specific emission standards and requirements. As such, the Alaska rule would not require a permit application to include the information necessary for the State to determine which standards in these sections actually apply to the facility, or to determine what sources at the facility are subject to those standards. As a condition of interim approval, EPA proposes to require that Alaska demonstrate to EPA's satisfaction that its application requirements meet the requirements of 40 CFR 70.5(c).

3. **Applicable Requirements.** Part 70 requires all "applicable requirements," as defined in 40 CFR 70.2, to be included in title V permit applications and permits. As stated above, the Alaska program does not use the term "applicable requirements", but instead requires that a title V permit contain each "air quality control requirement," which is defined in 18 AAC 50.990 as an obligation created by AS 46.14, 18 AAC 50 or a term or condition of a preconstruction permit issued by ADEC. By so constructing its program, the Alaska program allows the omission of two types of "applicable requirements" from title V permit applications and permits.

First, part 70 defines "applicable requirement" to include any standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rulemaking under title I of the Act that implements the relevant requirements of the Act, including any revisions to that plan promulgated in 40 CFR part 52. This would include standards and requirements of the Alaska State Implementation Plan, approved by EPA in 40 CFR part 52, subpart C, and provisions promulgated by EPA under title I of the Act (known as Federal Implementation Plans or "FIPs"). The Alaska regulations require that the current version of its State air regulations be included in title V permit applications and permits, rather than requiring that the version approved as part of the Alaska SIP be included in permit applications and permits. The Alaska program also does not require the inclusion of any FIP standards and requirements in Alaska title V permit applications and permits. Thus, the Alaska regulations do not ensure that the requirements of 40 CFR part 52, subpart C (the EPA approved and promulgated Alaska implementation plan) are included in permit applications and permits.

Part 70 also defines "applicable requirement" as including the terms and conditions of any preconstruction permits issued pursuant to regulations approved or promulgated through rulemaking under title I of the Act, including parts C or D of the Act. See 40 CFR 70.2. The Alaska program does require that the terms of any such State-issued permit be included in title V permit applications and permits. Prior to July 5, 1983, however, EPA issued permits to construct to new and modified major

stationary sources in Alaska under the PSD permitting regulations (40 CFR 52.21). These permits are still in effect and contain Federally-enforceable requirements for sources subject to those permits. Alaska's regulations would not require title V permit applicants to identify these terms and conditions of EPA-issued permits in permit applications, nor require the State to include these terms and conditions in title V permits.

As a condition of interim approval, EPA proposes to require that Alaska demonstrate to EPA's satisfaction that sources are required to include in permit applications and ADEC is required to include in title V permits all "applicable requirements" as defined in 40 CFR 70.2.

4. Emissions Trading Under a Federally-enforceable Emissions Cap. Part 70 requires a permitting authority, if a permit applicant so requests, to issue permits allowing for the trading of increases and decreases within the permitted facility solely for the purposes of complying with a Federally-enforceable emissions cap that is established in the permit independent of otherwise applicable requirements. See 40 CFR 70.4(b)(12)(iii). The comparable Alaska provision would allow trading of emissions increases and decreases for any facility-wide permit requirement, including emission limitations established to ensure attainment and maintenance of ambient standards and PSD increments. See 18 AAC 50.335(h) and 18 AAC 50.350(e)(4). These provisions appear to encompass and even broaden the types of emissions trading allowed for under 40 CFR 70.4(b)(12)(ii), 40 CFR 70.6(a)(8) and 40 CFR 70.6(a)(10) without including the remaining provisions of those sections. As a condition of interim approval, EPA proposes to require that Alaska demonstrate to EPA's satisfaction that the Alaska regulations do meet the requirements of the Act and 40 CFR part 70 with respect to emissions trading provisions.

5. Permit Content. EPA believes that there are currently two deficiencies with Alaska's regulations regarding permit content that require disapproval unless addressed prior to EPA final action on this proposal. First, as discussed in section B.1.iii. above, the Alaska rules do not include the "applicable requirements gatekeeper" to ensure that permit applications include all information necessary to impose all applicable requirements, even those for insignificant sources. The Alaska rules regarding permit content similarly omit the requirement to include permit terms and conditions to ensure compliance with such applicable requirements. See 18 AAC 50.350(d)(2) and (3). As such, the Alaska rules do not comply with the requirement of section 504(a) of the Act and 40 CFR 70.6(a)(1). Accordingly, EPA proposes to disapprove the Alaska program for failing to ensure that permits include all requirements applicable to a source unless Alaska demonstrates to EPA's satisfaction that its program meets the requirements of section 504(a) and 40 CFR 70.6(a)(1) for those insignificant sources subject to applicable requirements.

Second, EPA's regulations require that all emissions monitoring and analysis procedures or test methods required under

applicable requirements be included in the permit. See 40 CFR 70.6(a)(3)(i). However, Alaska's rules only require monitoring and analytical procedures consistent with certain federal standards adopted by reference in 18 AAC 50.040. As such, monitoring, analytical procedures and test methods required by Alaska rules, EPA-issued PSD permits, federal compliance orders, and other "applicable requirements" would not be required to be included in permits, contrary to the requirements of 40 CFR Part 70. Accordingly, EPA believes that it must propose to disapprove the Alaska program for failing to ensure that permits include all monitoring and testing requirements applicable to a source unless this deficiency is resolved prior to final action on this proposal.

6. **Administrative Amendments.** Part 70 allows the requirements of a preconstruction permit to be incorporated into a title V permit by administrative amendment, provided that such a preconstruction permit is issued under an EPA-approved program that meets procedural requirements substantially equivalent to the part 70 procedures for public, affected State and EPA review that apply to permit modifications and compliance requirements substantially equivalent to those required for part 70 permits. See 40 CFR 70.7(d)(1)(v). The Alaska program allows the incorporation of terms of preconstruction permits by administrative amendment "if the federal administrator reviewed the permit as an operating permit revision under AS 46.14.220 and did not object." See 18 AAC 50.370(a)(8). By referencing only the EPA review and objection requirements of AS 46.14.220, however, the Alaska regulation does not require that preconstruction permits incorporated by administrative amendment meet all of the other procedural requirements for permit issuance and does not require that such permits contain compliance requirements substantially equivalent to the requirements of a title V permit. Therefore, title V permits modified by administrative amendments through the incorporation of preconstruction permits in Alaska would not be required to provide for adequate public notice and an opportunity for public comment and hearing or to assure compliance with all applicable requirements, which are requirements for interim approval of a State operating permits program. See 40 CFR 70.4(c)(1), 70.4(d)(3)(iv) and 70.4(d)(3)(ii). Accordingly, EPA believes that it must disapprove Alaska's program unless Alaska demonstrates that issuance of preconstruction permits incorporated into a title V permit by administrative amendment meets the procedural requirements for issuance of title V permits and that the terms of such permits contain compliance requirements substantially equivalent to the requirements of a title V permit.

7. **Minor Permit Modifications.** Part 70 requires States to establish procedures for minor permit modifications which are substantially equivalent to those set forth in 40 CFR 70.7(e). The part 70 regulations contain criteria that a revision must meet in order to be processed as a minor permit modification.

See 40 CFR 70.7(e)(2)(i)(A). For example, a permit revision may not be made as a minor permit modification if the revision attempts to "establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject." 40 CFR 70.7(e)(2)(i)(A)(4).

The Alaska program takes the same basic approach to permit modifications as part 70. See 18 AAC 50.375. However, unlike part 70, the Alaska program only prohibits changes to be made by minor permit modification if the change would "revise permit terms or conditions" thereby allowing for the establishment of new terms and conditions using the minor modification procedures. See 18 AAC 50.375(a)(3) and (4). EPA therefore proposes to require, as a condition of interim approval, that Alaska demonstrate to EPA's satisfaction that its program meets the requirements of 40 CFR 70.7(e)(2)(i)(A).

8. **Permit Review by EPA.** Part 70 requires the permitting authority to submit to EPA a copy of each permit application, each proposed permit (the version that the permitting authority proposes to issue) and each final permit (the version that is issued by the permitting authority and has completed all required review). 40 CFR 70.2 and 70.8(a)(1). It then prohibits a permitting authority from issuing a permit until EPA has had an opportunity to review the proposed permit and all necessary supporting information and has not objected to the permit within 45 days of receipt of the proposed permit and such supporting information. 40 CFR 70.8(c)(1) and (e). The Alaska program requires the facility to submit a copy of each permit application to EPA and requires ADEC to provide to EPA each "preliminary decision, draft permit, final decision, and final permit". 18 AAC 50.335(a) and 50.340(j). AS 46.14.220 prohibits ADEC from issuing a permit until EPA approves the permit "or until 45 days after a copy of the final draft permit" has been provided by ADEC to EPA. None of these terms are defined in Alaska's regulations, however, and neither AS 46.14.220, nor the implementing regulations, appear to require ADEC to submit the proposed permit (as defined by part 70) and all necessary supporting information to EPA for review. Accordingly, EPA proposes to require, as a condition of interim approval, that Alaska demonstrate to EPA's satisfaction that ADEC is required to submit to EPA for review the proposed permit (as defined in part 70) and all necessary supporting information and that EPA's 45 day review period runs from EPA receipt of such information. At the same time, EPA recommends that Alaska define in its statutes or regulations each version of the permit and the accompanying permitting decisions that Alaska uses in its statutes and regulations.

9. **Permit Program Documentation.** Part 70 requires a State to submit, as part of its title V submission, relevant permit program documentation not contained in regulations, such as permit application forms, permit forms, and relevant guidance to assist in the State's implementation of its permit program. See

40 CFR 70.4(b)(4). The Alaska submittal does not contain this documentation, stating instead that its permit application forms and permit forms are currently under development. Without even draft copies of the permit forms and application forms Alaska intends to use in its program, EPA believes it must disapprove the Alaska program because such documentation is required as part of a State's title V submission. Should Alaska submit drafts of these documents before EPA takes final action on this proposal, EPA proposes to grant interim approval instead of disapproval. Final versions of these documents will need to be developed by the time they are needed to implement the program.

ATTACHMENT 2
Proposed 112(1) Disapproval Issues

Region 10 believes the provisions of Alaska's 112(1) submittal discussed below currently require disapproval for the following reasons.

1. Alaska did not adopt the preconstruction review sections of 40 CFR part 63 subparts A and B (sections 63.5(b)(2)-(4), and 63.54) because they already have similar preconstruction review requirements under 18 AAC 50.300 to -.320. The Alaska regulations (18 AAC 50.300 to -.320), however, do not apply to newly constructed non-major sources, whereas 40 CFR 63.5(b)(4) does. In this respect Alaska's preconstruction review program does not meet the stringency requirement of 40 CFR 63.91. Furthermore, 40 CFR 63.91 only applies to straight delegation requests. If Alaska wishes to receive 40 CFR 63.91 delegation for 40 CFR part 63 subparts A and B, Alaska must adopt the federal regulations as codified. If Alaska wishes to substitute the federal preconstruction review regulations of 40 CFR 63.5 and 63.54 with comparable State-adopted regulations, Alaska would need to make this delegation request under the authority of 40 CFR 63.93.

2. Alaska did not adopt into State law the general applicability requirements of 40 CFR 63.50, stating instead that this section of the Federal subpart B rule was not necessary for the State program. EPA disagrees with this conclusion and believes 40 CFR 63.50 is integral to determining which category of sources would be subject to the maximum achievable control technology (MACT) case-by-case determination requirements of 40 CFR 63.50 to 63.59.

ATTACHMENT 3
Proposed Title V Interim Approval Issues

Region 10 believes the provisions of Alaska's title V program discussed below currently require interim rather than full approval for the following reasons.

1. **Applicability.** The Alaska definition of "regulated air contaminant" in AS 46.14.990(21) is inconsistent with the EPA definition of the term "regulated air pollutant" in 40 CFR 70.2. Specifically, EPA's definition requires that any pollutant subject to section 112(j) of the Act be considered a regulated air pollutant on the date 18 months after the applicable date established pursuant to section 112(e) of the Act (i.e., the date that major sources are required to submit permit applications under section 112(j)(2)). The Alaska definition, however, only requires a pollutant to be considered a regulated air contaminant only after a permit has been issued pursuant to section 112(j). Since there are currently no sources or pollutants subject to section 112(j) of the Act, EPA does not consider this deficiency to be a disapproval issue. However, since sources and pollutants may become subject to section 112(j) in the future, the Alaska definition must be revised. As a condition of full approval, EPA proposes that Alaska demonstrate to EPA's satisfaction that its definition of "regulated air contaminant" is consistent with EPA's definition of "regulated air pollutant" in 40 CFR 70.2.
2. **Option to Obtain Permit.** Part 70 requires States to allow any source exempt under 40 CFR 70.3(b) to opt to obtain a part 70 permit. See 40 CFR 70.3(b)(3). The Alaska regulations do not contain a comparable provision and Alaska has not demonstrated that it has authority to issue permits to exempt sources. Few, if any, Alaska sources would be expected to apply for an optional title V permit, however, because Alaska has several mechanisms for obtaining Federally-enforceable limits through a means other than a title V permit. As a condition of full approval, however, EPA proposes to require that Alaska demonstrate to EPA's satisfaction that it has the authority required by 40 CFR 70.3(b)(3).
3. **Applicable Requirements.** Part 70 requires all "applicable requirements" to be included in a permit application and permit, and defines "applicable requirement" to include, among other things, the requirements of title VI of the Act (Stratospheric Ozone Protection). See 40 CFR 70.2. The Alaska definition of "applicable requirements" does not include all of the EPA regulations implementing title VI (40 CFR Part 82) but only Subparts B and F. Although EPA has proposed to revise 40 CFR part 70 to limit the definition of "applicable requirement" to only those provisions promulgated under sections 608 and 609 of the Act, this proposed revision is not yet adopted. As such, EPA believes it must propose interim approval of the Alaska program at this time because it does not meet the requirements of part

70. Should EPA revise part 70 as proposed, Alaska's rules will be consistent and no revisions will be needed. However, if EPA does not revise part 70 as proposed, EPA proposes to require that Alaska adopt and submit appropriate revisions as a condition of interim approval.

4. **Emissions Trading Provided for in Applicable Requirements.** Part 70 requires that the permitting authority must include terms and conditions, if the permit applicant request them, for trading of emissions increases and decreases in the permitted facility, to the extent that the applicable requirements provide for trading such increases without a case-by-case approval of each emissions trade. See 40 CFR 70.6(a)(10). The Alaska program does not contain a comparable provision. This appears to be based on the State's assumption that no applicable requirements currently provided for such trading. Certain EPA standards in 40 CFR Part 63, however, do allow for such trading, and as such, EPA believes that the Alaska program must contain such a provision as a condition of full approval. Therefore, as a condition of full approval, EPA proposes that Alaska ensure that its program include the necessary provisions to meet the requirements of 40 CFR 70.6(a)(10).

5. **Inspection and Entry Requirements.** Part 70 requires each title V permit to contain a provision allowing the permitting authority or an authorized representative, upon presentation of credentials and other documents as may be required by law, to perform specified inspection and entry functions. See 40 CFR 76.6(c)(2). The Alaska program fails to meet the requirements of part 70 in an important respect. Alaska law conditions ADEC's inspection and entry authority on first obtaining the consent of the owner or operator or a warrant. See AS 46.03.860; 46.14.515(a); 18 AAC 50.345(7). The owner or operator is not required to consent to such inspections and entry as a condition of obtaining a title V permit. EPA proposes to require, as a condition of full approval, that Alaska demonstrate to EPA's satisfaction that its inspection and entry authority meets the requirements of 40 CFR 70.6(c)(2).

6. **Progress Reports.** Part 70 requires a title V permit to require the submission of progress reports, consistent with the applicable schedule of compliance and 40 CFR 70.5(c)(8), to be submitted at least semiannually, or at a more frequent period if specified in the applicable requirement or by the permitting authority. See 40 CFR 70.6(c)(4). Alaska requires the submission of such reports semi-annually, but requires that they be submitted more frequently only if required by the permitting authority. See 18 AAC 50.350(k)(3). There is therefore no assurance that more frequent progress reports will be required in the permit if specified in the applicable requirement. As a condition of full approval, EPA proposes to require that Alaska demonstrate to EPA's satisfaction that its program complies with the requirements of 40 CFR 70.6(c)(4).

7. **Compliance Certification.** Part 70 requires a permitting program to contain requirements for compliance certification with terms and conditions contained in the permit, including emissions limitations, standards or work practices. See 40 CFR 70.6(c)(5). The Alaska program requires a title V permit to contain compliance certification requirements only with permit terms and conditions established under 18 AAC 50.345 (standard conditions) and 18 AAC 50.350(d) (source specific permit requirements), (e) (facility-wide permit requirements) or (f) (certain other requirements). It therefore does not require certification of compliance with all permit terms and conditions, such as monitoring, recordkeeping, reporting and compliance plan requirements. See 18 AAC 50.350(g), (h), (i) and (j). There may also be other terms and conditions of a permit that are required by a statute or regulation other than those specifically enumerated in 18 AAC 50.350(j).

8. **General Permits.** Part 70 allows States to issue "general permits," which are permits issued after notice and opportunity for public participation, that cover numerous similar sources. See 40 CFR 70.6(d). The Alaska program authorizes the issuance of general permits. See AS 46.14.210; 18 AAC 50.380. The Alaska provisions for general permits, however, fail to comply with the requirements of part 70 in one respect. Part 70 allows permitting authorities to provide for applications for general permits which deviate from the requirements of 40 CFR 70.5, provided that such applications otherwise meet the requirements of title V. 40 CFR 70.6(d)(2). The Alaska regulations indicate that ADEC will issue specialized permit applications for general permits, see 18 AAC 50.380(c) (source shall submit a completed application form issued by ADEC for the specific facility type), but do not require that such facility-specific applications meet the requirements of title V. Accordingly, EPA proposes to require, as a condition of full approval, that Alaska demonstrate to EPA's satisfaction that applications for general permits meet the requirements of title V.

9. **Affirmative Defense for Emergencies.** Part 70 provides an affirmative defense to an action brought for noncompliance with a technology-based limitation in a title V permit if certain specified conditions are met. See 40 CFR 70.6(g). Alaska's program provides an affirmative defense for unavoidable emergencies, malfunctions and nonroutine repairs that closely parallels 40 CFR 70.6(g), but is slightly broader than that section in a few respects. See AS 46.14.560; 18 AAC 50.235; 18 AAC 50.990. First, the Alaska regulations include a definition of "technology-based standard" that includes the phrase "any other similar standard for which the stringency of the standard is based on determinations of what is technologically feasible, considering relevant factors." Because a State's decision as to the appropriate mix of controls to be used to attain the ambient air quality standards in nonattainment areas is based in part on technical feasibility, this provision could be used to incorrectly classify a health-based standard as a technology-

based standard. Second, the Alaska regulations do not restrict the affirmative defense to those cases where the required showing is made through properly signed, contemporaneous operating logs or other relevant evidence, as is required by section 70.6(g)(3). Third, although the Alaska program requires a permittee claiming the affirmative defense to notify ADEC within two working days of the exceedance, Alaska gives a permittee up to one week after the discovery of the exceedance to provide ADEC with a written notice describing the cause of and its response to the exceedance. 18 AAC 50.235. Part 70 requires that written notice of the exceedance containing this information be provided within two working days of the exceedance. See 40 CFR 70.6(g)(3)(iv). As a condition of full approval, EPA proposes to require that Alaska demonstrate to EPA's satisfaction that its emergency provisions are consistent with the requirements of 40 CFR 70.6(g).

10. **Off-Permit Provisions.** Part 70 authorizes an approved permit program to include certain "off-permit" provisions whereby a source can make a change at the permitted facility without the need for a permit revision. See 40 CFR 70.4(b)(14) and (15). These provisions require the permittee to keep a record at the facility describing each off-permit change and to provide "contemporaneous" notice of each off-permit change to EPA and the permitting authority. See 40 CFR 70.4(b)(14). The Alaska program, however, limits the requirement to provide notice and keep records to only sources required to provide certain information under 18 AAC 50.335. As a condition of full approval, EPA proposes to require that Alaska ensure that its program requires notice and records for all off-permit changes.

11. **Statement of Basis.** Part 70 requires that the permitting authority shall provide and send to EPA and to any other person who requests a statement that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions. See 40 CFR 70.7(a)(5). The Alaska title V program does not contain a comparable requirement. As a condition of full approval, Alaska must demonstrate to EPA's satisfaction that its program satisfies the requirements of 40 CFR 70.7(a)(5).

12. **Administrative Amendments.** Part 70 authorizes States to allow certain ministerial types of changes to title V permits to be made by administrative amendment, which does not require EPA or public review or participation. See 40 CFR 70.7(d). That section contains a list five types of changes which may be made by administrative amendment, and authorizes EPA to approve as appropriate for incorporation by administrative amendment other types of changes which are similar to those specifically enumerated in 40 CFR 70.7(d)(1). See 40 CFR 70.7(d)(1)(vi). The Alaska program authorizes three types of changes to be made by administrative amendment in addition to the five listed in part 70. See 18 AAC 50.370(a)(4), (5) and (6). EPA proposes to approve two of these types of changes as appropriate for administrative amendment. See Attachment 4. EPA believes that

one of the three additional changes is not approvable for the following reason and must be revised as a condition of full approval.

Alaska's program allows alterations in the identification of equivalent replacement equipment or components that have been made been replaced with equivalent equipment or components to be made by administrative amendment provided certain conditions are met. See 18 AAC 50.370(a)(5). EPA believes that the restrictions on such permit alterations for equivalent replacement equipment or components are sufficient to ensure that any resulting change would be truly ministerial, with the following exception. 18 AAC 50.370(a)(5)(D) prohibits such a change to be made by administrative amendment if the revision would result in a modification under 40 CFR part 60, which is adopted by reference in 18 AAC 50.040. This restriction is too narrow, in that it would allow alterations in equivalent replacement or components even if the change resulted in a modification under 40 CFR part 61 or 63. Such changes are title I modifications and as such must be made by significant permit modification procedures. See 18 AAC 50.990(82); 18 AAC 50.375. Accordingly, EPA proposes to require, as a condition of full approval, that Alaska revise 18 AAC 50.370(a)(5)(D) to expand the prohibition to include modifications made pursuant to 40 CFR parts 60, 61 and 63, or to eliminate 18 AAC 50.370(a)(5) from the list of changes that may be made by administrative amendment.

13. Minor Permit Modifications.

Part 70 requires States to establish procedures for minor permit modifications which are substantially equivalent to those set forth in 40 CFR 70.7(e). The part 70 regulations contain criteria that a revision must meet in order to be processed as a minor permit modification and then contains procedures for those changes qualifying as minor permit modifications. See 40 CFR 70.7(e)(2)(i)(A). The Alaska program takes the same basic approach to permit modifications as part 70. See 18 AAC 50.375. The Alaska program is deficient, however, in several respects.

First, part 70 prohibits a permit revision to be made as a minor permit modification if the revision involves "significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit." 40 CFR 70.7(e)(2)(i)(A)(2). Part 70's significant modification procedures further restrict the class of revisions that may be processed as a minor permit modification, stating that "every significant change in existing monitoring permit terms or conditions and every relaxation of reporting or recordkeeping permit terms shall be considered significant." See 40 CFR 70.7(e)(4). Like part 70, the Alaska program prohibits changes to be made by minor permit modification if the change would "materially alter or reduce the frequency, accuracy, or precision of existing monitoring, recordkeeping, or reporting requirements in the permit." 18 AAC 50.375(a)(6). In contrast to part 70, however, neither Alaska's minor or significant modification procedures require that a relaxation of reporting or recordkeeping permit terms must be processed as a significant modification. Instead, the Alaska program simply

states that any revision that cannot be processed as an administrative amendment or minor permit modification shall be processed as a significant modification. 18 AAC 50.370(h). The Alaska program would therefore allow a relaxation of reporting or recordkeeping requirements to be processed as a minor modification, as long as the revision did not "materially alter or reduce" the frequency, accuracy, or precision of existing reporting or recordkeeping requirements.

Second, the Alaska program also appears deficient with respect to the information required in applications for minor permit modifications. Part 70 requires that an application for a minor permit modification must include a description of the change, the emissions resulting from the change and any new applicable requirements that will apply if the change occurs. 40 CFR 70.7(e)(2)(ii)(A). The Alaska program requires that an application for a minor permit modification contain a description of changes at the facility that would result from the proposed revision and, for any resulting changes at the facility, the information required by 18 AAC 50.335, which sets for the requirements for permit applications for title V permits. That section, however, would not appear to require a facility applying for a minor permit modification to provide information on the emissions resulting from the modification.

Finally, the Alaska program fails to include provisions which allow minor permit modification procedures to be used for permit modifications involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches to the extent that such minor permit modification procedures are explicitly provided for in an applicable implementation plan or in applicable requirements promulgated by EPA. See 70.7(e)(2)(B). Again, the Alaska program does not contain a comparable provision, based on an incorrect assumption by the State that no applicable requirement currently provided for the use of such minor permit modification procedures. However, as stated above in Attachment 4, certain EPA standards in 40 CFR Part 63 do allow for the use of minor modification procedures, and as such, this provision is required as a condition of full approval. Therefore, as a condition of full approval, EPA proposes that Alaska ensure that its program include the necessary provisions to meet the requirements of 40 CFR 70.7(e)(2)(B).

14. Group Processing of Minor Permit Modifications. Part 70 allows a permitting authority to process as a group certain categories of applications for minor permit modifications at a single source. See 40 CFR 70.7(e)(3). Section 70.7(e)(3)(i) establishes standard thresholds for determining whether requests for permit modifications can be grouped, but allows EPA to approve alternative thresholds, if the permitting authority can justify the alternative thresholds based on two specified criteria. The Alaska program contains provisions allowing group processing of minor permit modifications. See 18 AAC 50.375(d). The Alaska program, however, does not contain any thresholds, either the standard thresholds set forth in 40 CFR 70.7(e)(3)(i)

or proposed thresholds tailored to Alaska sources, for determining whether minor permit modifications may be processed as a group.

The failure of the Alaska program to establish thresholds for group processing leads to two additional deficiencies in the Alaska program. First, the Alaska program allows for group processing of minor permit modifications on a quarterly basis. Section 70.7(e)(3)(iii) requires that the permitting authority notify EPA of requested permit modifications to be processed as a group on a quarterly basis or within 5 working days of receipt of an application demonstrating that the aggregate of a source's pending applications equals or exceeds the approved threshold levels, whichever is earlier. Second, Alaska's regulations do not require a source to include in an application for group processing a determination of whether a requested modification, when aggregated with the other pending applications to be processed as a group, equals or exceeds the approved threshold levels, as required by 40 CFR 70.7(e)(3)(ii)(D).¹ As a condition of full approval, EPA proposes that Alaska be required to demonstrate that its group processing procedures are consistent with the requirements of 40 CFR 70.7(e)(3).

15. **Significant Permit Modifications.** Part 70 requires a State to provide for a review process that will assure completion of review of the majority of significant permit modifications within 9 months after receipt of a complete application. 40 CFR 70.7(e)(4)(ii). The Alaska submittal does not address this requirement in its regulations or otherwise in its program submittal. EPA proposes to require, as a condition of full approval, that Alaska provide assurances that its program is designed and will be implemented so as to complete review on the majority of significant permit modifications within this timeframe.

16. **Reopenings.** Part 70 establishes minimum requirements a State must meet where the State or EPA determines that cause exists to terminate, modify or revoke and reissue a permit. See 40 CFR 70.7(f) and (g). The Alaska program contains reopening provisions, but the provisions fail to comply with part 70 in several respects. Part 70 requires that a permit be reopened if additional requirements become applicable to a major part 70 source with a remaining term of 3 or more years. Reopening is not required if the effective date of the requirement is later than the date the permit is due to expire, except this exception to the reopening requirement shall not apply if the permit or its terms have been administratively extended. See 40 CFR

¹Because the Alaska group processing provision relies on the State's general permit modification procedures, Alaska's group processing provision is also deficient for the reasons set forth above in the discussion of the problems with Alaska's minor permit modification procedures. These issues must also be addressed for group processing as a condition of full approval.

70.7(f)(1)(i). The Alaska program satisfies the requirements for reopening a permit in the event of new applicable requirements, except that there is nothing in the Alaska program that would require reopening in the event that the effective date of a new applicable requirement is later than the permit expiration date but the permit has been administratively extended. See AS 46.14.280(a)(3)(B).

Part 70 also requires that a permit shall be reopened or revised if the State or EPA determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit. See 40 CFR 70.7(f)(2)(iii). The Alaska program states that ADEC may reopen a permit if the permit was obtained by misrepresentation of a material fact or by failure of the facility to disclose fully the facts relating to issuance of the permit or if the permit contains a material mistake. See AS 46.14.280(1)(A) and (2)(A). This provision of Alaska's program does not appear to comply with part 70 in the following respects. The Alaska program merely authorizes ADEC to reopen a permit under the stated circumstances. Part 70 requires that a permit be reopened if ADEC or EPA makes such a finding. In addition, even the circumstances under which the Alaska program would allow ADEC to reopen a permit (misrepresentation of a material fact or failure to fully disclose facts) appear to be narrower than the circumstances where reopening is required (material mistake or inaccurate statements in establishing permit terms).

The Alaska program also fails to contain required procedures in the event of a reopening for cause by EPA. Part 70 requires that, within 90 days of receiving notice from EPA that cause exists to terminate, modify or revoke and reissue a permit, the permitting authority shall forward to EPA a proposed determination of termination, modification, or revocation and reissuance. 40 CFR 70.7(g)(2). If EPA then objects to the permitting authority's proposed determination, the permitting authority has 90 days to resolve the objection by terminating, modifying, or revoking and reissuing the permit in accordance with EPA's objection. 40 CFR 70.7(g)(4). The Alaska program does not appear to contain any comparable provisions.

Finally, part 70 requires that a State title V program assure that reopenings are made as expeditiously as practicable. 40 CFR 70.7(f)(2). The Alaska program does not appear to contain a comparable provision either in its regulations or otherwise in its program submittal. EPA proposes to require, as a condition of full approval, that Alaska demonstrate to EPA's satisfaction that its provisions for reopenings comply with the requirements of 40 CFR 70.7(f) and (g).

17. **Public Petitions to EPA.** Part 70 allows any person, within 60 days after expiration of EPA's 45-day review period, to petition EPA to object to a permit based on grounds raised during the public comment period. See 40 CFR 70.6(d). If, as a result of such a petition, EPA objects to the permit and the permit has not already been issued, the permitting authority may not issue the permit until EPA's objection has been resolved. If the

permit has been issued at the time of an EPA objection resulting from a public petition, the petition for review does not stay the effectiveness of the permit and, after any action by EPA to modify, terminate, or revoke the permit, the permitting authority may thereafter issue only a revised permit that satisfies EPA's objection. Alaska's program does not appear to address these requirements. The prohibition on issuance of a permit if the EPA objects appears to apply only if EPA objects during its 45-day review period. AS 46.14.220(a). In the case of an EPA objection in response to a petition, EPA's objection would occur after the 45-day review period. EPA proposes to require, as a condition of full approval, that Alaska demonstrate to EPA's satisfaction that Alaska's provisions regarding public petitions to EPA comply with the requirements of 40 CFR 70.8(d).

18. **Public Participation.** Part 70 requires that the permitting authority make available to the public any permit application, compliance plan, permit, and monitoring and compliance certification report pursuant to section 503(e) of the Clean Air Act, except for information entitled to confidential treatment pursuant to section 114(c) of the Act, and expressly provides that the contents of a title V permit are not be entitled to confidential treatment. See 40 CFR 70.4(b)(3)(viii). Alaska's statutes and regulations regarding public access to information appear to be comparable to the requirements of part 70 with one exception. See AS 09.25.110 to -.220; 46.14.520; 45.50-910 to -.945. There is no express assurance under Alaska law that the terms and contents of a title V permit will not be entitled to confidential treatment. EPA believes that it is very unlikely that anything in a title V permit would qualify for confidential treatment under Alaska law in light of the narrow scope of information entitled to confidential treatment in Alaska and the provisions specifying the content of a title V permit. EPA therefore believes that the failure of the Alaska program to expressly state that nothing in a title V permit shall be entitled to confidential treatment does not pose a bar to interim approval. See 40 CFR 70.4(d)(3)(iv); see also 60 FR 54990, 54999 (October 27, 1995). In order to obtain full approval, however, Alaska must demonstrate to EPA's satisfaction nothing in a title V permit will be entitled to confidential treatment.

ATTACHMENT 4
Proposed Implementation Issues

The following is a list of areas where the Alaska program does not directly address certain requirements of part 70, but Region 10 believes either that the Alaska program, as a whole, satisfies the requirements of part 70 in that particular respect or (2) that no changes are currently required to the Alaska program to comply with part 70, but changes will likely be required some time in the future. If you do not share Region 10's understanding of the implementation and operation of your title V program, as described below, please advise us so in writing.

1. Application Submittal. Part 70 defines a "timely application" for sources applying for a title V permit for the first time as an application that is submitted within 12 months after the source becomes subject to the program or on or before such time as the permitting authority may establish. See 40 CFR 70.5(a)(1)(i). For sources required to meet the preconstruction requirements of section 112(g) of the Act or required to have a permit under the preconstruction review program approved into the SIP under part C or part D of the Act, a "timely application" is one that is submitted within 12 months after the source commences operation or such earlier date set by the permitting authority. 40 CFR 70.5(a)(1)(ii).

The Alaska program requires a source to submit an application within 12 months of becoming subject to the title V program or 60 days before beginning construction of a source if the facility containing the source is a new source that is not required to obtain a construction permit under AS 46.14.130(a). See AS 46.14.150(a). However, the Alaska program does not specifically address new sources under section 112(g) or parts C or D of the Act. EPA has interpreted the Alaska program as considering such sources as "becoming subject to the title V program" at the time the source commences operation, thereby making the Alaska program consistent with 40 CFR 70.5(a)(1)(ii).

2. Variances. AS 46.03.170 establish procedures for the granting of variances under certain conditions from compliance with applicable emission control regulations. EPA has previously disapproved these provisions as part of the Alaska SIP. See 40 CFR 52.75 (Volume III, Appendices, Section II State Air Quality Control Program, II.A. State Air Statutes). EPA regards AS 46.03.170 as wholly external to the program submitted by the State of Alaska for approval under part 70, and consequently proposes to take no action on these provisions of State law in this rulemaking. EPA does not recognize the ability of a permitting authority to grant relief from the duty to comply with a Federally-enforceable title V permit, except where such relief is granted through procedures allowed by part 70. In other words, a variance does not affect the title V source until the title V permit is modified pursuant to procedures approved under part 70. EPA reserves the right to enforce the terms of the

title V permit where the permitting authority purports to grant relief from the source's duty to comply with a title V permit in a manner inconsistent with procedures approved under part 70. A title V permit may also incorporate, via part 70 permit issuance or modification procedures, a schedule of compliance incorporated into a variance. EPA reserves the right, however, to pursue enforcement of applicable requirements notwithstanding the existence of a compliance schedule in a permit to operate. This is consistent with 40 CFR 70.5(c)(8)(iii)(C), which states that a schedule of compliance "shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based."

3. **Applicable Requirements.** The Alaska program does not use the term "applicable requirements" and therefore does not contain a concise definition of the Federally-enforceable requirements which must be contained in a title V permit. Rather, the Alaska program simply indicates that a title V permit must contain each "air quality control requirement" which is defined in 18 AAC 50.990 as an obligation created by AS 46.14, 18 AAC 50 or a term or condition of a preconstruction permit issued by ADEC. In order to ensure that all EPA-promulgated regulatory requirements are covered, ADEC has adopted by reference into 18 AAC 50.040 Federal regulations that currently apply to sources in Alaska. ADEC has not adopted, however, those existing Federal regulations for which there are currently no subject sources in Alaska. If at some future time, sources in Alaska become subject to these existing Federal regulations, ADEC will need to expeditiously update its incorporation by reference in order to adequately implement its title V program. In addition, as new EPA regulations are promulgated which apply to sources in Alaska, ADEC is expected to expeditiously incorporate these new regulations into 18 AAC 50.040.

4. **Inclusion of Fugitive Emissions.** EPA's regulations require that fugitive emissions be included in the permit in the same manner as stationary source emissions whether the source category in question is included in the list of sources for which fugitives must be included in determining a source's potential to emit. See 40 CFR 70.3(d). Alaska's regulations do not include a similar requirement, but rather, only contain the provisions regarding the inclusion of fugitives when determining a source's potential to emit. However, the Alaska rules do not include any provision which would explicitly allow a permit to exclude fugitive emissions once a source has been determined to require a permit. As such, EPA believes that the Alaska program complies with the requirements of EPA's regulations.

5. **Changes Provided for in the Permit.** Part 70 requires a permit to contain a provision stating that no permit revision shall be required, under any approved economic incentives, marketable permits, emissions trading and other similar programs or processes for changes that are provided for in the permit. See 40 CFR 70.6(a)(8). Similarly, part 70 requires that, if an

applicable implementation plan allows a determination of an alternative emission limit, equivalent to that contained in the plan, to be made in the permit issuance, renewal or significant modification process and the State elects to use such process, any permit containing such an equivalency determination shall contain provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable and based on replicable procedures. See 40 CFR 70.6(a)(1)(iii). The Alaska program does not contain corresponding requirements for permit content because there are currently no such programs in the Alaska SIP. EPA is proposing to approve this portion of the Alaska program based on an understanding that, should any such program be added to the Alaska SIP in the future, the provisions required by 40 CFR 70.6(a)(8) and 40 CFR 70.6(a)(1)(iii), as applicable, will be added to Alaska's title V rules at the same time.

6. **Administrative Amendments.** Part 70 authorizes States to allow certain ministerial types of changes to title V permits to be made by administrative amendment, which does not require EPA or public review or participation. See 40 CFR 70.7(d). That section contains a list five types of changes which may be made by administrative amendment, and authorizes EPA to approve as appropriate for incorporation by administrative amendment other types of changes which are similar to those specifically enumerated in 40 CFR 70.7(d)(1). See 40 CFR 70.7(d)(1)(vi). The Alaska program authorizes three types of changes to be made by administrative amendment in addition to the five listed in part 70. See 18 AAC 50.370(a)(4), (5) and (6). EPA proposes to approve two of these types of changes as appropriate for administrative amendment with the following understanding. EPA believes that one of the three additional changes is not approvable and must be revised as a condition of full approval. See Attachment 3.

The Alaska program allows a change in assessable emissions to be made by administrative amendment, provided the change does not allow emissions to exceed emissions allowable under the permit. See 18 AAC 50.370(a)(4). "Assessable emissions" is defined as the lesser of the annual rate of emissions of each air contaminant authorized by the facility's title V permit or the projected annual rate of emissions of each air contaminant based on previous actual annual emissions if the facility can make a certain showing to ADEC. See AS 46.14.240(h)(1). EPA interprets Alaska's administrative amendment procedures as allowing a change of assessable emissions only if the facility's assessable emissions are based on the facility's projected annual rate of emissions, and the change does not increase assessable emissions above the emissions allowable under the permit.

Finally, Alaska's program allows a source to convert an approval to operate under a general permit to a facility-specific permit with identical terms and conditions and the same expiration date. See 18 AAC 50.370(a)(6). According to Alaska's submittal, the purpose of allowing conversion from a general permit to a facility-specific permit is so that the permit can

then be modified, by means other than administrative amendment, without affecting other facilities operating under the general operating permit. By the express terms of 18 AAC 50.370(a)(6), such a change is a change in the type of permit and not in the permit terms themselves. EPA therefore believes that this type of change is sufficiently similar to the other truly "administrative" types of changes specified in part 70 as appropriate for administrative amendment.

ATTACHMENT 5
Comments on Proposed Rule Revisions

EPA has reviewed the proposed amendments to 18 AAC chapter 50 and believes the following changes are necessary for the rules amended by these amendments to receive full approval as part of Alaska's title V program and Alaska's SIP.

Title V Only

1. 18 AAC 50.335(b)(8) This provision must also require the application to include the facility's "Standard Industrial Classification" (SIC) code as required by 40 CFR 70.5(c)(2).
2. 18 AAC 50.335(e)(7) This new provision does not satisfy the requirements of 40 CFR 70.5(c) that "an application may not omit information needed to determine the applicability of, or to impose, any applicable requirement" (i.e., the "applicable requirements gatekeeper" for insignificant emission units). The emission standards in 18 AAC 50.055, 070, and 075 are not generally applicable standards that apply to any insignificant source but rather, are unit specific emission standards and requirements. In order for the Alaska program to comply with 40 CFR 70.5(c), this provision must require the permit application to include a list of the standards or requirements from 18 AAC 50.055, .070, and .075 that apply to insignificant sources, along with the identification of the sources to which they apply, rather than just a statement that the facility contains an insignificant source subject to a standard.
3. 18 AAC 50.350(e)(3) Note that the punctuation in this provision needs correcting - specifically, the comma after the word "terms" needs to be deleted.
4. 18 AAC 50.350(e)(4) This provision is inconsistent with the emissions trading provisions in 40 CFR 70.4(b)(12) and 70.6(a)(8) and is not approvable. Because the Alaska SIP does not contain any emissions trading provisions, the only emission trading provision that can be included in the title V rules is that allowed by 40 CFR 70.4(b)(12)(iii).
5. 18 AAC 50.375(a)(3) and (4) These provisions must also include the establishment of such permit terms or conditions, not just the revision of such terms.
6. 18 AAC 50.990(81) The new paragraph (E) must either be deleted or ADEC must specifically identify what other standards would be covered by this provision. There are no other federal technology-based standards which are not already specifically included in paragraphs (A) through (D). All standards submitted by Alaska for inclusion in the SIP must include a demonstration of attainment and maintenance of the NAAQS, thereby making them health-based standards. Terms and conditions in permits to construct, other than BACT or LAER, are based on ambient air

quality considerations. EPA is unaware of any "similar standards" which would be covered by this provision.

Title V and PSD/NSR

1. 18 AAC 50.210 POTENTIAL TO EMIT. Two problems: (1) allows for consideration of emission standards or limitations in rules, and conditions in permits which do not limit a sources physical capacity to emit (per the LP decision); and (2) requires fugitive emissions to be "reasonably quantifiable" rather than just quantifiable. Note: the provision in 210(b)(2) that fugitives must be from "sources included in the facility type" may need to be an implementation issue based on the future outcome of the litigation on fugitive emissions and support facilities.
2. 18 AAC 50.990(92) "VOC or volatile organic compounds" Two problems: (1) adds "volatile methyl siloxanes" which isn't on the EPA list of excluded compounds; and (2) doesn't include requirements for testing and quantification in order to qualify for exclusion.

PSD/NSR Only

1. 18 AAC 50.300(h)(1) and (2) The proposed change from "actual" to "allowable" in these two provisions is unacceptable. The definition of "modification" in both the Act (section 111(a)(4)) and EPA regulations (40 CFR 60.2) is based on increases in "actual" emissions.
2. 18 AAC 50.310(n)(2) As in #1 above, the use of "allowable" rather than "actual" emissions is unacceptable.
3. 18 AAC 50.315(e)(2) This provision must clearly indicate that the concentrations in Table 6 do not apply to the maximum allowable ambient concentrations (i.e., the PSD increments).
4. 18 AAC 50.990(92) "VOC or volatile organic compounds" One additional PSD/NSR problem: Doesn't list all excluded compounds so would allow sources to take netting credit for compounds which are not considered to be VOC's.

Attachment 3 contains a list of issues that Region 10 believes will require interim, rather than full approval, if they are not resolved before EPA takes final action on Alaska's submittal. If EPA grants final interim approval of the Alaska title V program, Alaska will have two years to make changes to its regulations and statutes to address the interim approval issues.

Attachment 4 contains a list of areas where the Alaska program does not directly address certain requirements of part 70, but Region 10 believes either that the Alaska program, as a whole, satisfies the requirements of part 70 in that particular respect or no changes are currently required to the Alaska program to comply with part 70, but changes will likely be required some time in the future (see discussion in Attachment 4). If you do not share Region 10's understanding of the implementation and operation of your title V program, as described in Attachment 4, it would be helpful if you explained any differences in a letter.

Attachment 5 addresses issues that Region 10 has identified in its review of the most current version of the proposed amendments to 18 AAC Chapter 50. It lists the issues that must be addressed in order for EPA to fully approve the regulations affected by the proposed amendments as part of Alaska's title V program and part of Alaska's SIP.

In preparing the Attachments listed above, Region 10 has assumed that the most current version of the proposed amendments to 18 AAC Chapter 50, which the Department of Environmental Conservation informally submitted to Region 10 for review on January 8, 1996, will be the version that is finally promulgated. The disapproval, interim approval and implementation issues identified in the attachments would, of course, change if the proposed amendments are not adopted. Any changes other than editorial ones are likely to require additional revisions to the draft Federal Register notice. On the positive side, if the proposed amendments are changed before adoption to address the concerns identified by Region 10 in Attachment 5, disapproval or interim approval issues could be eliminated.

Please also note that the attachments include the issues that have been identified by Region 10 staff. Additional issues may be identified during review of the Alaska submittal by EPA Headquarters, which we anticipate will be completed within a week after Region 10 receives the final regulations from Alaska. (This assumes that EPA is not shut down after the continuing resolution providing temporary funding expires on January 26.) In the event additional items are identified by EPA Headquarters, we will supplement this letter with any such additional issues.

Alaska Oil & Gas Association

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Date: 1/26/96 Total # of pages including cover sheet: 3

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Marilyn Crockett, Assistant Executive Director

January 26, 1996

TO: Len Verrelli, Director, Division of Air and Water Quality

FROM: Marilyn Crockett

RE: Title V Regulatory Workgroup Proposal

On behalf of the Alaska Stakeholders Coalition, attached is the outline of the Title V Regulatory Workgroup Proposal.

A handwritten signature in cursive script, appearing to read 'Marilyn', is positioned below the main body of the letter.

cc: Commissioner Michele Brown
John Stone, Chief, Air Quality Maintenance

TITLE V REGULATORY WORKGROUP PROPOSAL

Objective: Develop amendments to 18 AAC 50 to obtain EPA approval and address remaining concerns of Alaska Stakeholders and ADEC.

Workgroup Members:

- ADEC
- EPA
- Legislative Staffers
(House & Senate Resources Committee)
- Utilities (ARECA, Electric Utilities)
- Industry
- Public
- Municipalities/Villages
- Dept. Of Law

Timeframe: The goal is to complete this effort in two weeks. To accomplish this goal, efforts should be initiated the week of February 5, 1996 and two meetings per week should be conducted (for a total of four meetings)

Process:

- Meetings to be chaired by a facilitator who is familiar with the issues.
- Meetings to be recorded and transcripts distributed to participants prior to each meeting.
- Members to agree to process.
- Flexibility in Meeting Locations.

Substantive Issues for Stakeholders/Agencies:

Workgroup will address and attempt to resolve EPA disapproval/interim approval issues and stakeholder issues. Stakeholder issues are:

- Unavoidable Excess Emissions
- Ambient Air Quality Impact Requirements
- 1 Insignificant Sources
- Modifications
- 2 Agency Discretion
- 3 *Temporary sources - non-road engines, drilling rigs*
- Streamlined Permitting
- 4 Billing/Audit Procedures

SIP

STATE OF ALASKA

TONY KNOWLES, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION
OFFICE OF THE COMMISSIONER
410 Willoughby Avenue, Suite 105
Juneau, Alaska 99801-1795

Phone: (907)465-5066
Fax: (907)465-5070
TTY: (907)465-5133

February 8, 1996

Alaska Stakeholder Coalition
% Ms. Marilyn Crockett
Alaska Oil & Gas Association
121 W. Fireweed Lane, Suite 207
Anchorage, Alaska 99503

Dear Ms. Crockett:

I would like to thank you and the rest of the Alaska Stakeholder Coalition (ASC) for the recent proposal to work out your remaining concerns with Alaska's air quality regulations. We are committed to working with ASC and other interested parties to ensure that the air quality rules are not more stringent than necessary to protect the air quality enjoyed by Alaskans, while maintaining the productivity of Alaska's businesses.

We are concerned about the process ASC has proposed, primarily because it establishes an unrealistic time frame to address extraordinarily complex issues of serious concern to many different interests. ASC proposed to resolve eight complex issues in two weeks with four short meetings. In addition, ASC, at our request, proposed to address the new EPA disapproval issues (expressed in a 26 page letter dated 1/10/96) in these same four meetings. While a well-organized effort can make much progress in two weeks, only a cursory review of these complex issues could be accomplished in this time frame.

In addition, the format and short time-frame proposed by ASC would effectively exclude meaningful public participation. The "Drafting Manual for Administrative Regulations" states that an oral hearing should be scheduled no sooner than 20 days into the public comment period in order to allow the public time to arrange to attend. While the meetings proposed by ASC are not precisely oral hearings, the Department still needs to allow the public time to arrange to attend. The Department of Law recommends a minimum of 10 days public notice for open meetings.

As an alternative, we offer the following good faith effort to establish a process that will retain Alaska's primacy, address ASC's concerns and allow the public meaningful participation.

First, we plan to propose changes to Alaska's regulations to meet the EPA disapproval issues as soon as possible. We have been meeting extensively with EPA on these issues. As a result, we believe that most of these issues can be resolved with minimal changes to the regulations. We plan to suggest those changes to EPA by February 16. We believe the most time-critical task for the Department is to address the EPA's concerns and, by doing so, avoid a federal take-over of air quality management in Alaska. If the EPA disapproval issues are not satisfactorily addressed immediately, the rest of the discussion may become moot.

February 8, 1996

The EPA disapproval issues do not generally affect ASC's concerns, except for the "Potential to Emit" and "Technology-based emission standards" regulations. For these two sections, EPA has stated that Alaska's regulations do not meet the federal minimums, so it would not be productive for us to discuss ASC's assertion that these regulations exceed the federal minimums until an understanding is reached with EPA. ASC will still have the opportunity to discuss corrections for these particular areas during the ensuing public comment period described below.

Second, we are willing to propose several regulation options for addressing ASC's concerns and to host work groups and public meetings to resolve the outstanding issues as quickly as possible. We will also address the remaining EPA issues through the forum and have requested EPA to directly participate in the work sessions to expedite the process.

Specifically, if you let us know as soon as possible if this plan is acceptable, we can public notice the meetings and have the first meeting by the middle or end of February. As you suggest, the first such meeting will be devoted to establishing ground rules for the following working meetings and discuss points such as the use of a mediator, meeting location, and transcription of the meetings.

Before the first meeting, ASC and others can review our proposed regulation options to see if they are sufficiently "on target" to be formally noticed. If so, we can put them out for public notice immediately, and then commence the public work sessions to fine tune the regulations proposals. This should expedite the process considerably. If the proposed regulation options are not ready for notice, we can work on them collectively during work groups and put them out to public notice as soon as we have an acceptable proposal.

Given the nature and number of issues it is our best estimate that it may take several months to address all the issues. However, we propose moving ahead with separate regulatory packages based upon a priority list established at the first meeting. We understand that this presents a longer time frame for resolution than you had requested. We are willing to do whatever is feasible to expedite this effort, but we also want to give you a realistic picture so that we will all enter the process with clear expectations.

As you know, we must have a Title V proposal that meets federal approval to avoid jeopardizing primacy for the Alaska air quality program. We understand that the EPA will be prepared to assume control of the permit program before the end of April. We believe that the process we have laid out provides the best opportunity for avoiding federal assumption of the Alaska program and for addressing ASC's concerns, while maintaining clean air for the citizens of Alaska. Please contact me if you can suggest any improvements to the process we have described here.

Sincerely


Michele Brown
Commissioner

DEPT. OF ENVIRONMENTAL CONSERVATION

DIVISION OF AIR & WATER QUALITY
410 Willoughby Avenue, Suite 105
Juneau, Alaska 99801-1795

Phone: (907) 465-5260
Fax: (907) 465-5274

August 25, 1995

Ms. Kathryn K. Lamal
GVEA, Inc.
P.O. Box 71249
Fairbanks, AK 99707-1249

Dear Ms. Lamal:

This letter responds to your July 27, 1995, letter. In that letter, you asked the Department to consider revising the opacity standard for coal-fired utilities. You state that Alaska opacity standards should be no more stringent than federal standards, and that Alaska should use other states' standards as a model for its own regulations. As a final note, your letter says that Alaska should make use of a standard that has already gone through federal review.

My staff has reviewed your request (see enclosed memorandum). Alaska's current regulation has already gone through federal review (1972). Also, Alaska's regulation appears to be similar to many other states' regulations. The changes proposed by the Coal Burners group, however, seem to combine parts of other states' regulations in a way that is less protective of our air quality resource than any other state. As presently written, the Department cannot propose the changes you suggest.

The Department will consider changes in the opacity standard that still meet the State's air quality goal of clean air. My staff advises me that allowing increased opacity during certain boiler operations can provide you the changes you seek and meet the State's goal. However, to maintain and protect air quality, such boiler operations must be well-defined and the effect of allowing increased opacity must be examined. We need the Coal Burner's group to help us gather the necessary information, in order to grant your request. The conclusions of the enclosed memorandum explain some of the needed information.

My staff is also developing a guide explaining the information we need to make good air quality management decisions. I have enclosed a draft of this guide. I hope this information will assist you in evaluating this change and future changes you may propose. My staff is available to meet with you to discuss your request at length, should you desire.

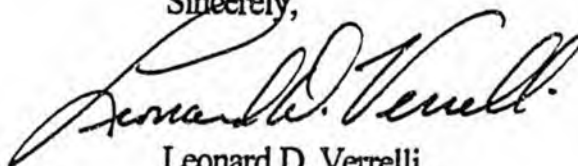
Ms. Kathryn K. Lamal

-2-

August 25, 1995

If you have further comments or questions on this issue, please contact John Stone, Chief, Air Quality Maintenance Section, at (907) 465-5100.

Sincerely,

A handwritten signature in cursive script, appearing to read "Leonard D. Verrelli".

Leonard D. Verrelli
Director

LDV/JMS/JK/pal (h:\air\johnk\gvea.ltr)

Enclosure

MEMORANDUM

State of Alaska
Department of Environmental Conservation
Division of Air & Water Quality - Air Quality Maintenance


TO: Leonard Verrelli, Director
Air and Water Division

DATE: August 22, 1995

FILE NO: 363.11

THRU: John Stone, Chief ~~of the~~
Air Quality Management Section

TELEPHONE NO: 465-5100; FAX: 465-5129

FROM: John Kuterbach 
Air Quality Management Section

SUBJECT: GVEA Petition to change opacity
standards

As requested I have reviewed the change requested by Golden Valley Electric Association to our opacity regulations. This memo summarizes my analysis and conclusions.

Summary

A group of coal-burning power plants in interior Alaska asked the department to consider changing the opacity standard that applies to them. I analyzed our existing regulation and the proposed changes to that regulation. Our existing regulation is comparable to other states regulations, and the proposed change is more lenient than other states. During normal boiler operation, coal-fired facilities can comply with our current 20 percent standard using reasonably available control technology. Because the change does not make air quality management sense, I recommend that the department retain the 20 percent opacity standard for normal boiler operation.

Several other states do allow greater opacity during certain boiler operations, such as start up, shut down, soot blowing, etc. Although the proposed change is too lax and ambiguous to be adopted as is, the department should look at allowing greater opacity during these periods. For good air quality management, any new regulation should clearly define these periods and limit the allowable excess opacity in both amount and duration.

Introduction

A group of coal-burning power plants in interior Alaska asked the department to consider changing the opacity standard that applies to them. According to these utilities, it is common for coal-fired plant to exceed the department's 20 percent opacity standard during start-up, shut-down, soot blowing, grate cleaning, and unintentional boiler disruptions.

Existing regulation

The department adopted its existing regulation in 1972 after full public comment. The public comment included Charles Winegarden, Chief Engineer for Golden Valley Electric Association (GVEA). GVEA is one of the power utilities requesting a change to the regulations. Mr. Winegarden did not object to or comment on the opacity regulation; however, the Alaska Oil and Gas Association did recommend a 40% opacity standard for existing industrial facilities. The final regulations established a 20% opacity standard, which may be exceeded for up to three minutes in any one hour. These final regulations were approved by the EPA in Alaska's State Implementation Plan.

Comparison to other states' regulations¹

For existing sources, about half of the U.S. states and territories specify an opacity of 20% or less for existing sources at least part of the state. Limiting the analysis to western states does not change this statistic. (See attached pie charts). Alaska's opacity standard is typical of opacity standards in other states for normal operation.

Alaska's regulation does differ from other state's regulations in two ways. First, most other states use a six-minute average to determine opacity. Because of Alaska's climate, condensed water vapor often precludes an accurate six minute reading of stack opacity. Therefore, Alaska's regulation specifies that the 20 percent limit may be exceeded for no more than three minutes in any one hour. Each observation of opacity represents 15 seconds of emissions, and a violation is detected when 13 or more observations in one hour exceed the opacity limit. Typically, other states allow 3 or 5 minutes of excess emissions per hour.

Many, but not all, other states also provide for boiler disruptions such as start-up, shut-down, soot blowing, and the like. Alaska does not. States that do provide for greater opacity during these operations typically set limits on the excess opacity through one or more of the following:

- Limit on the maximum opacity during these operations (commonly 40 or 60 percent)
- Limit the amount of time the opacity may exceed the standard (per hour, per day, or per event)
- Limit on the number of events per day or the length of an event
- Continuous emission monitoring

Proposed Regulation Change

The power utilities suggested a new regulation (see Table I below). This new regulation changes the normal operation opacity standard and adds a less stringent opacity standard for certain boiler operations. Also, generous exemption times are included in the proposed standard².

¹ Analysis of State and Federal Particulate and Visible Emission Combustion Sources, EPA-450/ 2-81-080, November 1981.

² Exemption times suggested equal 10% of entire operation time

TABLE I. The regulation proposed by the coal-fired utilities.

"Visible emissions, excluding condensed water vapor, from an industrial process or fuel burning equipment may not reduce visibility through the exhaust effluent by . . .

(9) greater than 40 percent for a total of more than 6 minutes in any hour for coal-fired power plants that commenced operation before August 17, 1971; and

(10) greater than 60 percent for not more than 6 minutes in any one hour for coal-fired power plants when emissions occur due to start up, shut down, grate cleaning, ash cleaning, boiler disruptions or soot blowing."

The power utilities developed this rule using Montana, Washington State, and 40 CFR 60, subpart D as references³

Effect of regulation and comparison to other states' regulations on which the power utilities based their proposal

Proposed Regulation	Equivalent Montana Regulation	Equivalent Washington State Regulation	40 CFR 60 Subpart D
Opacity limited to 40%, except for 6 minutes in any one hour when the opacity can be up to 100%	Opacity limited to 40%, 6-minute average (no exempt time)	Opacity limited to 20%, except for 3 minutes in any one hour when emissions can be up to 100 percent AND All emissions units must use reasonably available control technology	Opacity limited to 20%, six-minute average, except for one six-minute period per hour which is limited to 27%
Opacity during specific operations limited to 60%, except for 6 minutes in any one hour when opacity can be up to 100%	Opacity during specific operations limited to 40%, except that opacity may be up to 60% for one four-minute period each hour. Period must be four consecutive minutes.	Opacity during specific operations can exceed 20% for up to 15 minutes in any consecutive eight hours	Federal new source rules do not apply during start up and shut down

³ GVEA Letter dated February 17, 1995 to Commissioner Burden, ADEC.

Evaluation of proposed regulation changes

To evaluate the suggested changes, this study examines the following points:

1. Is the current regulation reasonable compared to other states?
2. Can the facilities comply with the current opacity regulation using reasonably available control technology?
3. Is the proposed change reasonable compared to other states?
4. Does the proposed change make sense from an air quality perspective?
5. What effect does the proposed change have on the existing Alaska State Implementation Plan.

Point 1 - Is the current regulation reasonable compared to other states?

As explained earlier, Alaska's regulation is comparable to other states' regulations. However, it may not be reasonable to expect the facilities to comply with 20 percent opacity during specific boiler operations such as start up, shut down, grate cleaning, and soot blowing. Many other states have provisions for such operations.

Point 2 - Can the facilities comply with the current opacity regulation using reasonably available control technology?

For normal operations, existing facilities can comply with 20 percent opacity using reasonably available control technology. Both the experience in other states and our own experience with the Fairbanks Municipal Utility System's Chena 5 unit show this to be true. Some coal-fired unit may need to upgrade their existing control equipment to comply with the standard. If the power utilities disagree with this conclusion, they should provide evidence showing that no reasonably available control technology can comply with the 20 percent opacity standard during normal operations.

For the boiler disruption operations (i.e. start-up, shut down, soot blowing, grate cleaning, and ash removal), we do not have enough information to say whether reasonably available control technology would ensure compliance. Certainly, the example of other states is to establish specific limits or narrow exemptions that apply to these operations.

Point 3 - Is the proposed change reasonable compared to other states?

The proposed change would make Alaska's regulation the least stringent opacity standard in the United States.

Point 4 - Does the proposed change make sense from an air quality perspective?

In Alaska, the opacity regulations serve two air quality purposes—to indicate compliance with the particulate matter standard and to protect visibility. The proposal from the power utilities addresses neither of these issues. We have no data.

Neither do we have any data on the cost of complying with these regulations. Any regulation will have costs associated with it, and air quality management must balance these costs with the expected environmental benefit. The same must hold true when relaxing existing regulations. The economic benefit gained must be tempered by the environmental degradation endured. With no data, one can not make a sound air quality management decision.

The proposed exemptions are too ambiguous to represent good air quality management. Most other states are very careful to fully describe and limit the boiler operations that result in increased opacity. Also, the exemption time of six minutes is too generous, considering that Alaska does not enforce a six minute average. Other regulations that allow a six minute exemption only allow one six-minute period (i.e. six consecutive minutes) to exceed the standard while the utilities propose six minutes in any one hour.

Point 5 - What effect does the proposed change have on the existing Alaska State Implementation Plan (SIP)?

The opacity regulation in the Alaska SIP indicates compliance with the particulate matter standard and protects visibility. If the new opacity standard still indicates compliance with the particulate matter standard, and if the particulate matter standard does not change, then this change would not significantly change the Alaska SIP. We do not currently have any data to show whether this is the case with the proposed change.

Conclusions

My analysis indicates that the department should not adopt the regulation proposed by the power utilities as written. I came to this conclusion from the following points:

1. The existing regulation has been an approved part of Alaska's SIP for 23 years.
2. The existing opacity standard is comparable to other state standards
3. Facilities can comply with this standard using reasonably available control technology.
4. The change proposed by the power utilities is not reasonable compared to other states.
5. The change does not make sense from an air quality management perspective because of
 - a lack of data regarding the need for the change and the attendant environmental effect
 - the ambiguous language of the exemptions, and
 - the too-lenient exemption periods (six minutes in any one hour)
 - no data on whether the relaxed opacity would still ensure compliance with particulate matter standard.

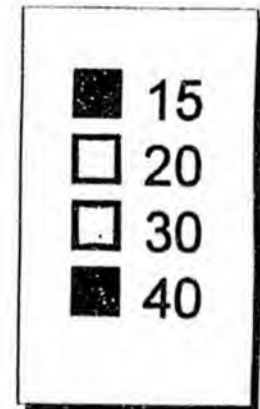
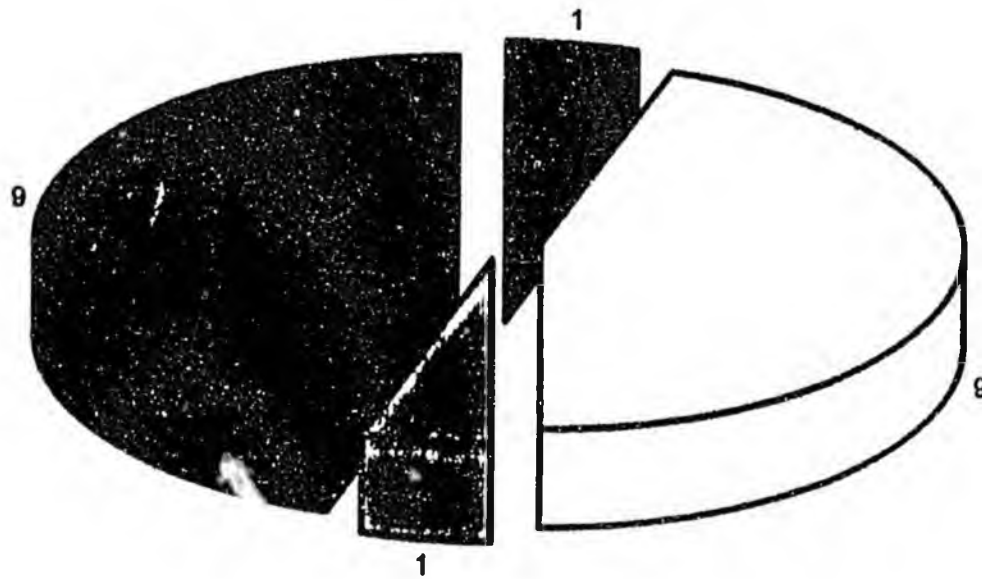
Other states often do allow limited periods of increased opacity for specific boiler operations. The department may want to look at adding a similar standard. To craft such a standard, the department needs to know the following:

- what specific boiler operations can be expected to increase opacity (i.e. 'boiler disruption' is too general to be useful)?
- how often do these events have to take place?
- how long do these events last
- what increased opacity can be expected (assuming reasonably available control technology)?
- how long is opacity increased?
- can the facility comply with the particulate matter standard during these periods?
(0.1 gr/dscf averaged over three hours)

The draft guideline for requesting changes specifically lists the information we need to approve a change in emission standards.

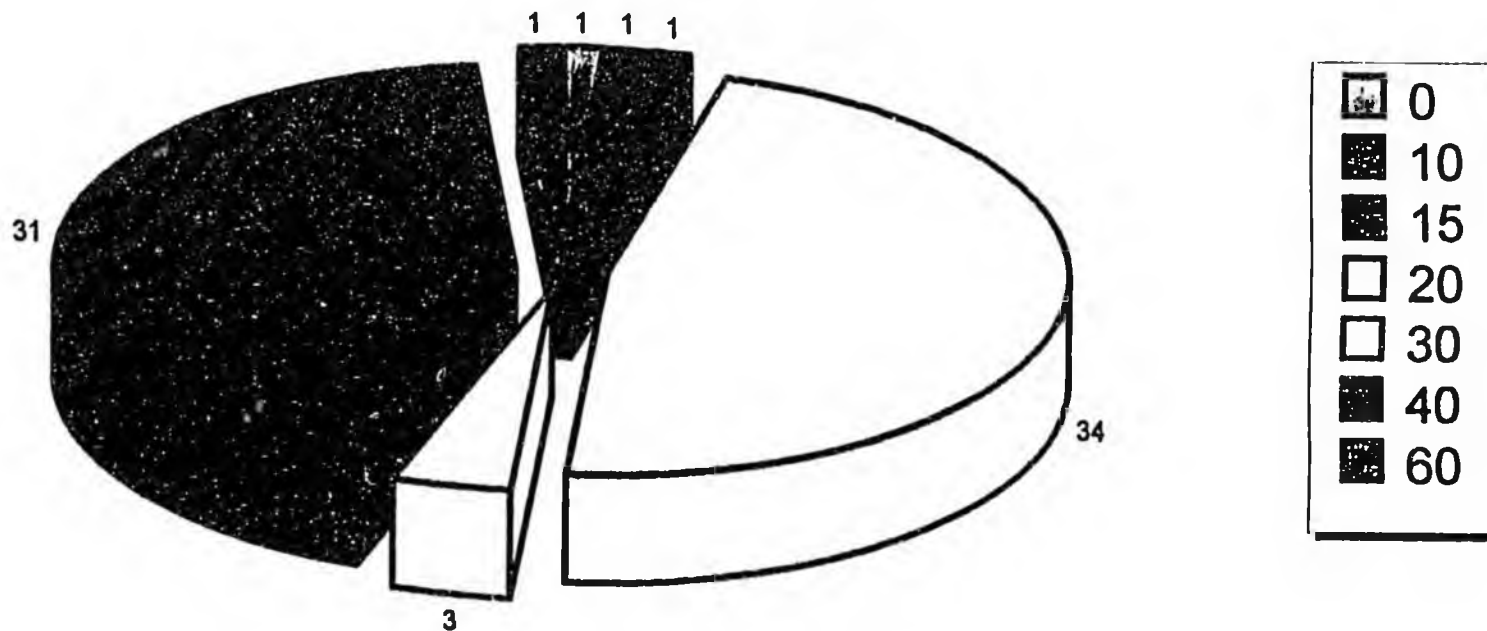
Western States

Existing Source Opacity Limits



Western States: AK, AZ, CA, CO, ID, MT, NM, NV, OK, OR, TX, UT, WA, WY
Some States have multiple opacity standards

Opacity Standards for Existing Sources



*All U.S. States and Territories
Some States have multiple standards*

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**Guide for Requesting Changes to the
Opacity, Particulate Matter, Sulfur Compounds
Emission Standards
in 18 AAC 50**



**Prepared by the
Air Quality Maintenance Section**

Alaska Department Of Environmental Conservation
August 22, 1995

DRAFT

Purpose of this Document

This document helps accomplish the following:

- (1) It explains how a person may request changes to the air pollution standards that are listed in 18 AAC 50.050, 50.055, and 50.060.
- (2) It explains how the ADEC will act upon the requests.

Please note that this document is not intended to diminish or restrict any right or privilege which a party may have under the Alaska Administrative Procedure Act.

Why this Document is Necessary

In accordance with the 1990 amendments to the Clean Air Act, ADEC developed new air pollution regulations during 1994 and 1995. A major component of these regulations is a new operating permit program established in 18 AAC 50.

This program requires certain facilities to submit applications that contain a certification of their compliance status with air pollution control requirements. For each requirement whose status is compliance, the application must contain a statement that the facility will continue to comply with the requirement. For those requirements whose status is non-compliance, the application must contain a compliance plan that dictates remedial measures, as an enforceable sequence of actions with milestone dates, that lead to compliance.

ADEC received many comments from the public on this new program. Several commenters stated that they do not currently meet some of the air pollution standards established in 18 AAC 50, and would not be able to certify that they were in compliance with the requirements. They requested that ADEC change the air pollution standards so they could certify compliance. Other commenters requested that ADEC increase the stringency of the air pollution standards to ensure the public's health and welfare is protected.

ADEC did not act upon these requests during development of the operating permit regulations because the requests were beyond the scope of the regulation development project, and, most importantly, we did not have sufficient information to assess the air quality impact of changing the standards.

This document provides a mechanism for people to request changes to certain air pollution standards and outlines what information must accompany the request. Our intent is to establish an orderly and efficient process for acting upon requests to change the standards.

DRAFT

An Explanation of the Air Pollution Standards

The emission standards listed in 18 AAC 50.050, 055, and 060 are the subject of this document. The standards are for incinerators, fuel burning equipment and industrial processes, and pulp mills. These emission standards help meet the requirements that were established in the 1970 and 1977 Clean Air Acts. In doing this, they help ensure that air pollution does not exceed the ambient air quality standards for particulate matter and sulfur compounds. The ambient standards are established to protect human health and welfare. They also help ensure that Alaska's air quality resources are not significantly deteriorated.

In addition, these emission standards are part of Alaska's plan that is approved under §110 and §161 of the Clean Air Act, which was prepared, developed, and submitted in accordance with the implementing regulations found in 40 C.F.R. Part 51. Alaska's approved plan is published in 40 C.F.R. Part 52, Subpart C. The approved plan provides the authority for ADEC's primacy to implement major Clean Air Act programs.

ADEC established these emission standards in 1972. The standards are established for general classes of air pollution sources and represent a continuous level of emission reduction that was believed to be reasonably available in 1972. In the early 1980's, a second group of emission standards was added to further the goals of public health and welfare protection, and to help ensure that Alaska's air resources are not significantly deteriorated.

Who Can Request a Change to the Air Pollution Standards

Through this document, any person can request ADEC to change the air pollution standards.

During the regulation development process, the basis for requests was for one of two reasons. Owners and operators that are subject to the air pollution standards requested changes due to compliance problems under certain operating conditions. These operating conditions include, but are not limited to, startup and shutdown of an affected source, or problems during operating modes such as sootblowing, gratecleaning, or maintenance.

Other people have requested changes because they believe the emission standards do not adequately protect the ambient air quality standards, air pollution increments, or applicable air quality related values in Alaska's Class I areas or integral vistas.

We will consider requests for these and other reasons.

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How to Request A Change to the Air Quality Control Requirements

ADEC will consider requests for changes under this document until **January 1, 1996**. Due to time constraints, ADEC will not consider requests received after this date within the schedule of this regulation project.

All requests and supporting information must be sent to the Alaska Department of Environmental Conservation, Air Quality Maintenance Section, Attn: John Stone, Chief, 410 Willoughby Avenue, Juneau, Alaska, 99801.

What the Request Must Include

All requests will need to include some basic supporting information. ADEC expects there will be three types of requests for changes to the air pollution standards. A request could increase the stringency, relax the stringency, or have no effect upon the stringency of the standard. Depending upon the effect of the request, specific additional information must be provided.

All requests must include the following basic supporting information.

1. Contact information of the person making the request.
2. A specific citation of the air pollution standard that is the subject of the request.
3. If applicable, the name of the facility, its Air Permit Number, and a description of the sources at the facility that are subject to the emission standard.
4. A description of, and an explanation of the reason for, the request, including a detailed showing of whether the request increases, decreases, or has no effect upon the stringency of the air pollution standard.
5. The specific request, in the form of a proposed enforceable emission standard. To be considered enforceable, the proposed emission standard must
 - (a) specify the equipment or operation that is subject to the standard, including definitions of the equipment or operation when needed;
 - (b) limit the quantity, rate, or concentration of emissions on a continuous basis, including any requirements that limit the level of opacity, set fuel specifications, prescribe specific equipment, or prescribe operation and maintenance procedures to assure continuous emission reduction;
 - (c) specify the time or averaging period of the proposed emission standard; and
 - (d) prescribe procedures for monitoring compliance, including the test methods used to detect violations.

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Any requests that increase the stringency of an air pollution standard must include a demonstration that shows why the increase in stringency is necessary. To demonstrate that the increase in stringency is necessary, the requestor must

1. cite the specific Clean Air Act and/or underlying federal requirement that forms the basis of the request; and
2. show why the change is needed and how the change will meet the specific Clean Air Act and/or underlying federal requirement by using the ambient analyses methods outlined in 18 AAC 50.510.

Any requests that reduce the stringency of an air pollution standard must include the following additional information.

1. A showing that the basis for the request is not the result of improper, careless, or inadequate design, maintenance or operation, or the lack of reasonably available pollution control equipment or practice for the specific source type.
2. For a request that would result in or cause an increase in the allowable emissions of particulate matter or sulfur compounds at a facility,
 - (a) a showing of the allowable emissions increase in units consistent with the averaging period of each relevant ambient air quality standard and air pollution increment;
 - (b) an analysis of the effect of the allowable emissions increase on ambient air quality using the methods outlined in 18 AAC 50.510; and
 - (c) if the allowable emission increase would cause the facility to be subject to 18 AAC 50.300(a), an application for a permit to operate in accordance with 18 AAC 50.300(b) – (h).

How ADEC will Act Upon the Requests

ADEC will review each request beginning on January 1, 1996 to determine if all of the supporting information has been provided. In situations where additional information or clarification is needed, ADEC will, after consultation the requestor, specify the information that is needed to complete action upon the request, and the date such information must be submitted. After receiving all information needed to act upon a request, ADEC will conditionally approve those requests that meet the underlying requirements and purposes of the Clean Air Act and the Alaska Statutes, and notify the requestor if its determination.

DRAFT

ADEC will then prepare and propose the conditionally-approved requests as changes to its regulations in accordance with the Alaska Administrative Procedure Act. ADEC will seek -- public comment on the technical and public policy merits of adopting the changes. After full consideration of the public comment, ADEC will adopt, modify, decline to adopt the change. For those changes that are adopted, ADEC will submit the changes to the U.S. EPA for review and approval as part of Alaska's implementation plan.

ADEC expects to act upon these changes as quickly as possible. Based upon current staffing and workload, we expect to propose the conditionally-approved changes around July 1, 1996.

For more information, please contact John Stone at (907) 465-5100.

Guide for Requesting Changes to the Opacity, Particulate Matter, Sulfur Compounds Emission Standards in 18 AAC 50



Prepared by the

**Alaska Department Of Environmental Conservation
December 4, 1995**

Air Quality Maintenance Section

Purpose of this Document

This document helps accomplish the following:

(1) It explains how a person may request changes to the air pollution standards that are listed in 18 AAC 50.050, 50.055, and 50.060.

(2) It explains how the ADEC will act upon the requests.

Please note that this document is not intended to diminish or restrict any right or privilege which a party may have under the Alaska Administrative Procedure Act.

Why this Document is Necessary?

In accordance with the 1990 amendments to the Clean Air Act, ADEC developed new air pollution regulations during 1994 and 1995. A major component of these regulations is the new operating permit program established in AS 46.14 and 18 AAC 50.

This program requires certain facilities to submit applications that contain a certification of their compliance status with air pollution control requirements. For each requirement whose status is compliance, the application must contain a statement that the facility will continue to comply with the requirement. For those requirements whose status is non-compliance, the application must contain a compliance plan that dictates remedial measures, as an enforceable sequence of actions with milestone dates, that lead to compliance.

ADEC received many comments from the public on this new program. Several commenters stated that they do not currently meet some of the air pollution standards established in 18 AAC 50, and, as a result, would not be able to certify that they were in compliance with the requirements. Usually, the non-compliance was associated with certain operating condition such as startup and shutdown of an affected source, or problems during sootblowing, grate cleaning, or routine maintenance activities. The commenters requested that ADEC change the air pollution standards so they could certify compliance.

Other commenters requested that ADEC increase the stringency of the air pollution standards to ensure the public's health and welfare is protected.

ADEC did not act upon these requests during development of the operating permit regulations because the requests were beyond the original scope of the regulation development project, and, most importantly, we did not have sufficient information to assess the air quality and economic impacts of changing the standards.

This document provides a mechanism for any person to request changes to certain air pollution standards and outlines the information that must accompany the request. Our intent is to establish an orderly and efficient process for acting upon requests to change the standards.

An Explanation of the Air Pollution Standards

The air pollution standards listed in 18 AAC 50.050, 055, and 060 are the subject of this document. The standards are for incinerators, fuel burning equipment and industrial processes, and pulp mills. These standards help meet the requirements that were established in the 1970 and 1977 Clean Air Acts by helping to ensure that air pollution does not exceed the national ambient air quality standards for particulate matter and sulfur compounds and to prevent significant deterioration of Alaska's air quality resources.

The standards are part of Alaska's plan that is approved under §110 and §161 of the Clean Air Act, which was prepared, developed, and submitted in accordance with the implementing regulations found in 40 C.F.R. Part 51. Alaska's approved plan is published in 40 C.F.R. Part 52, Subpart C. The approved plan provides the authority for ADEC's primacy to implement the Clean Air Act stationary source programs.

ADEC established the standards in 1972. The standards are established for general classes of air pollution sources and represent a continuous level of emission reduction that was believed to be reasonably available in 1972. In the early 1980's, a second group of emission standards was added to further the goals of public health and welfare protection, and to help ensure that Alaska's air resources are not significantly deteriorated.

How Do I Request A Change to the Air Quality Control Requirements?

ADEC will consider requests for changes under this document until **February 29, 1996**. Due to time and budget constraints, ADEC will not consider requests received after this date within the schedule of this regulation project.

All requests and supporting information must be sent to the Alaska Department of Environmental Conservation, Air Quality Maintenance Section, Attn: John Stone, Chief, 410 Willoughby Avenue, Juneau, Alaska, 99801.

What Information Must My Request Include?

ADEC expects there will be three types of requests for changes to the air pollution standards. A request could increase the stringency, relax the stringency, or have no effect upon the stringency of the standard. Information to be provided depends upon the type of request.

All requests must include the following basic information.

1. Contact information of the person making the request.
2. A specific citation of the air pollution standard that is the subject of the request.
3. If applicable, the name of the facility, its Air Permit Number, and a description of the sources at the facility that are subject to the emission standard.
4. A description of, and an explanation of the reason for, the request, including a detailed showing of whether the request increases, decreases, or has no effect upon the stringency of the emission standard.
5. The specific request, in the form of a proposed enforceable emission standard. To be considered enforceable, the proposed emission standard must
 - (a) specify the equipment or operation that is subject to the standard, including definitions of the equipment or operation when needed;
 - (b) limit the quantity, rate, or concentration of emissions on a continuous basis, including any requirements that limit the level of opacity, set fuel specifications, prescribe specific equipment, or prescribe operation and maintenance procedures to assure continuous emission reduction;
 - (c) specify the time or averaging period of the proposed emission standard; and
 - (d) prescribe procedures for monitoring compliance, including the test methods used to detect violations.

Requests that increase the stringency of an air pollution standard must include a demonstration that shows why the increase in stringency is necessary. To demonstrate that the increase in stringency is necessary, the requestor must

1. cite the specific Clean Air Act and/or underlying federal requirement that forms the basis of the request; and
2. show why the change is needed and how the change will meet the specific Clean Air Act and/or underlying federal requirement, including supporting documentation using the ambient analyses methods outlined in 18 AAC 50.510.

Requests that reduce the stringency of an air pollution standard must include the following additional information.

1. A showing that the basis for the request is not the result of improper, careless, or inadequate design, maintenance or operation, or the lack of reasonably available pollution control equipment or practice for the specific source type.
2. For a request that would result in or cause an increase in the allowable emissions of particulate matter or sulfur compounds at a facility,
 - (a) a showing of the allowable emissions increase in units consistent with the averaging period of each relevant ambient air quality standard and increment;

- (b) an analysis of the effect of the allowable emissions increase on ambient air quality using the methods outlined in 18 AAC 50.510; and
- (c) if the allowable emission increase would cause the facility to be subject to 18 AAC 50.300(a), an application for a permit to operate in accordance with the applicable requirements of 18 AAC 50.300(b) -- (h).

How ADEC will Act Upon the Requests

ADEC will review each request beginning on March 1, 1996 to determine if all of the supporting information has been provided. In situations where additional information or clarification is needed, ADEC will, after consultation the requestor, specify the information that is needed to complete action upon the request, and the date such information must be submitted. After receiving all information needed to act upon a request, ADEC will conditionally approve those requests that meet the underlying requirements and purposes of the Clean Air Act and the Alaska Statutes, and notify the requestor of its determination.

ADEC will then prepare and propose the conditionally-approved requests as changes to its regulations in accordance with the Alaska Administrative Procedure Act. ADEC will seek public comment on the technical and public policy merits of adopting the changes. After full consideration of the public comment, ADEC will adopt, modify, decline to adopt the change. For those changes that are adopted, ADEC will submit the changes to the U.S. EPA for review and approval as part of Alaska's implementation plan.

ADEC expects to act upon these changes as quickly as possible. Based upon current staffing and workload, we expect to propose the conditionally-approved changes around July 1, 1996.

For more information, please contact John Stone at (907) 465-5100.

How ADEC developed the Air Quality Regulations

★ Alaska adopts a law to meet new and existing Federal Requirements

★ ADEC seeks extensive public input before proposing regulations



Summer, 1993
ADEC holds workshops
to explain new law &
get public input



December, 1993
ADEC drafts "Strawman" regulations,
holds presentations including a video
broadcast, and requests comment

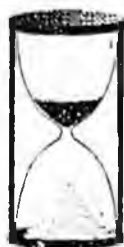


January-March, 1994
ADEC responds to
comment on "Strawman"
and holds workshops on
important issues



Propose Regulations. June 1, 1994

★ ADEC Seeks extensive public input after proposing regulations



ADEC extends the Public
Comment Period twice at
request of industry
commentators. ADEC
accepts comment from June
1st through August 31st.



ADEC holds workshops and hearing
throughout the summer, including a
teleconference hearing



ADEC holds special workshops at
request of industry commentators

★ ADEC reviews public comment and prepares final regulations



Fall, 1994

ADEC reviews comment & prepares final regulations to meet EPA deadline



EPA asks for submittal by November, 1994
Clean Air Act sets EPA deadline of May, 1995

★ Some groups ask ADEC to hold another comment period before adopting final regulations.



December 5, 1994

Commissioner Sandor decides to adopt final regulations, and to allow commentators to request changes to these regulations

ADEC works with Dept of Law to ensure adopted regulations meet state and federal requirements



June 1995

ADEC submits program for EPA approval



February-August, 1995
Industry groups recommend changes to regulations

★ ADEC proposes regulation changes



August 1995
Meet w/industry to



Sept - Nov 1995
Public comment on changes



December, 1995
Adopt final changes
Draft appropriate guidance

Time line on Development of Alaska's Air Quality Regulations

1993

- June 25 Signed into Law "An Act Related to air quality control and the prevention, abatement, and control of air pollution; relating to inspection and enforcement powers of the Department of Environmental Conservation; and providing for an effective date (SCS CSHB 167(JUD) am S/Chapter 74)
- July 20 Town meeting held in Juneau, 7pm, at Centennial Hall, Egan Room, 101 Egan Drive to discuss new statute and solicit public input into the regulation development process.
- July 26 Town meeting held in Anchorage, 7pm, at ZJ Loussac Library, Public Conference Room, 3600 Denali, to discuss new statute and solicit public input into the regulation development process.
- July 27 Town meeting held in Fairbanks, 7pm, at Captain Bartlett Hotel, Chart Room, 1411 Airport Way, to discuss new statute and solicit public input into the regulation development process.
- July 28 Town meeting held in Valdez, at Valdez Civic Center, 110 Clifton Drive, to discuss new statute and solicit public input into the regulation development process.
- July 29 Town meeting held in Kenai, at Kings Inn, Atrium, 10352 Kenai Spur Hwy, to discuss new statute and solicit public input into the regulation development process.
- Aug 3 Town meeting held in Sitka, at the Centennial Building, Rousseau Room, 330 Harbor Drive, to discuss new statute and solicit public input into the regulation development process.
- Aug 5 Town meeting held in Ketchikan, at First Bank, Conference Room, 309 Dock St, to discuss new statute and solicit public input into the regulation development process.
- August 20 Deadline for returning citizen questionnaires on Development of ADEC's revised Air Quality Permit Program.
- October 4 Workshop in Bethel on regulation development plan, 7:30 pm, the Log Cabin

- October 5 Workshop in Anchorage on regulation development plan, 7:30 pm, Egan Center
- October 6 Workshop in Fairbanks on regulation development plan, 7:30 pm, Westmark
- October 7 Meeting with AOGA representatives in the AOGA conference room 121 W. Fireweed Lane, Anchorage, at 3 pm
- October 11 Workshop in Juneau on regulation development plan, 4 pm, ADEC Conference room
- October 21 ADEC distributed draft outline of new regulations. Regulation adoption scheduled for November 1, 1994.
- October 25 Progress update teleconference meeting (8 locations)
- November 4 Progress update teleconference meeting (8 locations)
- November 15 **CLEAN AIR ACT DEADLINE FOR SUBMITTING STATE TITLE V PROGRAMS (CAA §502(d))** After this deadline, the Administrator of the EPA may, in the Administrator's discretion, apply sanctions to the State.
- November 15 At the request of industry, ADEC distributed Pre-release Draft of two Articles of the Strawman Regulations
- November 18 Progress update teleconference meeting (8 locations)
- November 29 Strawman regulation package distributed for review
- December 8 Workshop held in Anchorage, 10 am, at the Regal Alaskan Hotel, Denali 2 Room, 3rd floor, 4800 Spenard Rd.
- December 9 Workshop held in Fairbanks, 10 am, at the Westmark Hotel Rampart Room, 813 Noble St.
- December 10 Workshop held in Soldatna, 10 am, at the Kenai Peninsula Borough Bldg., Assembly Chambers, 114 North Binkley St.
- December 14 Workshop held in Juneau, 10 am, Centennial Hall, Egan Room.
- December 15 Extended the comment deadline on Strawman regulations to January 21, 1994.
- December 20 Public Workshop on Air Pollution Regulations (via satellite). Cable Channel 33 in Bethel, Nome-Belz High School, Nome; UAS Sitka Campus, 1332 Seward Sitka; Kodiak College, 117 Bennie Benson, Kodiak; UAA Campus, Anchorage, and Valdez;

1994

- January 19 Public Hearing on ADEC Air Quality Small Business Assistance Program, Anchorage, 2pm, Public Conference Room, Loussac Library, 3600 Denali
- January 20 Public Hearing on ADEC Air Quality Small Business Assistance Program, Fairbanks, 9am, Ester Conference Room, Fairbanks North Star borough Administrative Center, 809 Pioneer Rd.
- January 21 Department received about 350 pages of comment from 45 commentators.
- January 28 Comment deadline for comments on ADEC Air Quality Small Business Assistance Program.
- February 28 ADEC distributed "Response to Your Comments on Strawman Packet & The Next Steps"
- March 2-3 Workshop in Anchorage, Egan Civic Center, covering Start-up/Shutdown, Emergencies, and monitoring /Testing.
- March 9 ADEC distributed re-write of Operating permits section of regulations for public comment.
- March 15 - 16 Workshop in Anchorage , Sheraton Anchorage, covering Operating Permits and Statewide teleconference comments on the Strawman regulations
- March 21 Workshop in Anchorage on Alaska's Air Pollution Prohibited regulation (Called Detriment to Persons or Property in the Strawman).
- March 22 Workshop in Fairbanks on Alaska's Air Pollution Prohibited regulation (Called Detriment to Persons or Property in the Strawman).
- March 24 Workshop in Sitka on Alaska's Air Pollution Prohibited regulation (Called Detriment to Persons or Property in the Strawman).
- March 31 Deadline for comments on the March 9 revisions to the operating permit program
- April 4, 5, 6, 7 ADEC holds workshops on Open Burning in Palmer, Kenai, Fairbanks, and Delta Junction respectively
- June 1 ADEC proposes regulations in 18 AAC 50. Deadline for public comment is August 1, 1994.
- July 5-6 Workshop and public hearing on proposed regulations in Anchorage, at the Sheraton Hotel Anchorage.

- July 7 Workshop and public hearing on proposed regulations in Fairbanks.
- July 11 Workshop and public hearing on proposed regulations in Juneau.
- July 19 At the request of industry, ADEC extends the comment period to August 12, 1994
- July 26 Public hearing by teleconference on the proposed regulations, including 11 LIO's around the State.
- August 1 Initial deadline for comments on Proposed Changes in Air Quality Control Plan.
- August 2 Notice of Extension of Comment Deadline for Proposed Changes in Air Quality Control Plan (extended to August 31).
- August 12 Deadline for submittal of survey on how ADEC could reorganize the Air Quality Management Program's Permitting Activities.
- August 15 Special meeting with Matthew Cohen and certain industry representatives in Juneau at the ADEC conference room.
- August 29 Public Meeting to solicit comment on several alternatives to the organization of the Air Quality Management Program, Lousic Library.
- August 31 Deadline for comments on Proposed Changes in Air quality Control Plan. Department received about 500 pages of comment from 58 commentators.
- Sept. 26-30 Air Quality Inspector's Basic Training Program. Offered by the California Air Resources Board and the ADEC., 8:30 am. - 5:30 pm., Westmark Hotel, Anchorage.
- December 5 Commissioner Sandor adopted the new 18 AAC 50. ADEC announced plan and schedule for accepting comments on further revisions to the regulations.

1995

- Jan. 5 ADEC distributed "Response to Comments" on June 1, 1994 Proposal.
- Jan. 17-18 Public meeting on Air Regulations, Regal Alaskan.
- February 17 Comment deadline for public input on additional changes to December 5, 1994 Adopted Regulations. Department received 101 pages of recommended changes from 16 parties, some of whom never commented before.
- April 20 ADEC distributed "Adopted Draft Incorporating Public Comments and Changes proposed by Department of Law", dated April 14, 1995.
- May 15 **CLEAN AIR ACT MANDATORY SANCTION DEADLINE.** If a state fails to submit a Title V program by this date, the Administrator must apply sanctions. (CAA§502(d)(2)(B))
- May 17 Commissioner Burden signs final regulations.
- June 13-14 Public meeting to discuss new regulations and ADEC organization.
- July 18 Department met with the Cook Inlet operators to discuss their specific concerns.
- July 19 Department met with AOGA in Anchorage to discuss their concerns about "non-road" engines
- July 28 ADEC responds individually to stakeholders who expressed concern over process leading to 5/17/95 adoption of regulations.
- August 17 Department received a letter from Matthew Cohen containing 9 pages of comment about specific provisions in the adopted regulations.
- August 30 Department met with AOGA to discuss their specific concerns
- September 5 Department met with Matthew Cohen and other industry representative to discuss their specific concerns
- September 8 Department received 9 pages of comment on the department's adopted regulations from the Trustees for Alaska.
- Sept. 19 ADEC proposes amendments to 5/17/95 regulations. Comment deadline set at October 31, 1995.
- October 4 ADEC holds workshop in Anchorage on proposed amendments.

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- October 26 Public hearing on proposed amendments.
- October 31 Comment deadline on proposed amendments.
- November 15 **MANDATORY FEDERAL TAKE-OVER DEADLINE.** If a State fails to submit an approvable program by this date, the Clean Air Act requires the EPA to promulgate, administer and enforce a federal permit program.
- December 19 ADEC distributed copies of 12/18/95 Adoption Draft of Amendments: Response to Comments on Amendments Proposed on September 19, 1995; and Response to Comment on Requested Changes Beyond the Scope of the Public Notice.

Svend Brandt-Erichsen (206) 447-0900

House Resources Committee
January 18, 1996

Overview

- * There has been an open dialogue
- * DEC has accepted our suggestions in some areas and has corrected errors and clarified some provisions
- * The remaining issues are well defined.
 - Some policy disputes
 - Some disagreements over interpretation
 - A few may result from differences in priority -- DEC apparently thinks they can wait, and we don't

What Were We Supposed To Accomplish?

- * Operating permit program required by federal law
- * Alaska already had a combined construction and operating permit program, renewable every five years
- * In developing these rules, DEC set out to replace the existing program with two permits:
 - one-time construction permit
 - operating permit renewed every five years

Why Are We Unhappy?

- * The operating permit rules go beyond the federal model in some important respects.
 - Fairness Operating permits should not be the vehicle for imposing new requirements on facilities that haven't changed
 - Consistency For EPA guidance to apply, DEC must have the same rules, or at least the same basis for its rules as EPA
- * The construction permit program contains some changes from the existing rules that we object to.
- * While the construction permit rules were being rewritten, we asked for some changes which the department would not agree to.

- Exceeding Federal Requirements . . . Unrealistic requirements
- Streamlining opportunities

**House Resources Committee
Briefing
January 18, 1996
Presented by John Stone, Chief
Air Quality Maintenance Section/ADEC**

I. INTRODUCTION - WHO IS AIR QUALITY MAINTENANCE SECTION?

- A. 24 Current Staff in AQM
- B. 22 Technical Staff have 194 years of Air Quality Management Experience in both the public and private sector
- C. 6 Registered Professional Engineers & 8 EIT's preparing to take the Professional Engineering Exam
- D. Many staff with advanced degrees in engineering and environmental-related disciplines

II. WHAT DOES ALASKA'S AIR QUALITY CONTROL PLAN CONSIST OF?

- A. Started in 1972, periodic revisions since that time
- B. Gives Alaska primacy for construction permits for industrial development
- C. Gives Alaska primacy for vehicle emission control programs

III. WHAT IS TITLE V?

- A. A New federal operating permit program created by the 1990 Clean Air Act -designed to improve compliance with air pollution laws
- B. Who is subject to Alaska's operating permit program? About 450 Alaska Facilities

IV. LEGISLATIVE INTENT OF AS 46.14

“It is the intent of the Legislature to comply with the Clean Air Act in a manner that meets the federal requirements, allows efficient and cost effective processing of permits, requires accountability from ADEC on matters relating to recovery of program costs, and ensures the productivity of Alaska’s businesses while protecting the health and welfare of the state’s residents.”

“It is the intent of the legislature that ADEC implement AS 46.14 in a manner that contains costs, minimizes the number of staff performing air quality permit duties, fosters accountability, improves efficiency of government, and uses its contracting authority as appropriate to undertake alternative methods of accomplishing duties under this Act.”

V. WHAT IS ADEC DOING TO MEET LEGISLATIVE INTENT?

- A. Obtain primacy of all important federal clean air programs
- B. Develop regulations to obtain primacy of the federal clean air programs
- C. See Attachment 1.
- D. What is the cost of the implementing AS 46.14? - See Attachment 2

VI. HOW ADEC DEVELOPED REGULATIONS TO IMPLEMENT AS 46.14

- A. Public Process
 - 1. See Time line Attachment
 - 2. Extensive opportunities for public input/Far beyond what required in the Administrative Procedures Act

VII. REGULATIONS THAT RECEIVED THE MOST COMMENT

The regulations that received the most comment and deliberation pertained to the following topics:

- A. Did ADEC exceed the federal requirements for primacy in the air pollution regulations?
- B. What air pollution violations are excused and how are they excused?
- C. Did ADEC provide for all of the federal air pollution exemptions?

VIII. POLICY PRINCIPLES USED BY COMMISSIONER SANDOR AND BURDEN FOR MAKING DECISIONS ON REGULATIONS FOR THE NEW PROGRAM

- A. Develop regulations that meet the intent of the Legislature
- B. Do not fundamentally alter the existing programs that provide primacy to Alaska
- C. Develop new regulations to obtain primacy of the new 1990 Clean Air Act programs - Title V permits and Title III Hazardous air pollutants
- D. Adhere as closely as possible to the new Title V and Title III permit program requirements
- E. Develop regulations and a program that is in "plain English"
- F. Program maximum flexibility to permittees
- G. Incorporate public comment where possible
- H. Make sure the regulations make air quality management sense
- I. Meet Clean Air Act Deadlines

IX. REMAINING REGULATORY ISSUES OF THE ALASKA STAKEHOLDER'S COALITION

1. Excess Emissions - What air pollution violations are excused?

ADEC analyses of concern- affirmative defense provided to maximum extent of federal law/ EPA claims that we went to far, will need to be trimmed back

ADEC action to address concern - created a process to work with industry to adjust stack standards to address compliance concerns. We believe this process will address concerns in a manner that ensures continued primacy of Alaska's program.

2. Ambient Air Quality Impact Requirements Application of PSD increments

ADEC analyses of concern:

- 1. Alaska's PSD program submitted and approved by EPA in the early 1980's**
- 2. ADEC did not reallocate the compliance obligations among industrial facilities from the federally-approved PSD program**
- 3. Past 13 years of experience shows that Alaska's program is just barely, and maybe not, adequate to meet the federal requirements for preventing significant deterioration of air quality**

ADEC action to address concern:

- 1. ADEC can reexamine and redistribute compliance obligations for the prevention of significant deterioration program among Alaska' source of air pollution.**
- 2. Will require increased in staff and/or contractor assistance to accomplish**
- 3. Will require robust public involvement during development of program to ensure continued state primacy and that all affected individuals understand and comment on the impact of new compliance obligations**

3. Air pollution exemptions - Three classes of exemptions

1. Insignificant pollutant sources

ADEC analyses of concern - current program does not meet EPA requirements/ goes too far

ADEC action on concern - adjust program to meet EPA requirements for securing federal primacy and adjust the list on an ongoing basis as we gain experience during implementation of the program

2. Temporary Sources - exemptions for certain oil exploration activities

ADEC action - work underway with the oil industry and EPA to create a regulatory regime that meets the federal requirements in a manner that minimizes the regulatory burden on industry

3. Modifications - exemptions for pollution increases classified by cause of pollution increase

ADEC analysis - ADEC program more flexible/does not exempt pollution for cause, exempts by amount

ADEC action - agree to undertake regulations providing pollution exemptions for cause

4. Audit Requirements

ADEC action - agree to work with industry on audit procedures and incorporate regulation changes if needed.

5. ADEC's ability to specify terms and conditions in permits to ensure compliance with state pollution laws

ADEC analysis - ADEC restricted by Alaska Statute/cannot violate statute requirements

ADEC action - needs specific examples of Stakeholder's concerns in order to find out how to address concerns.

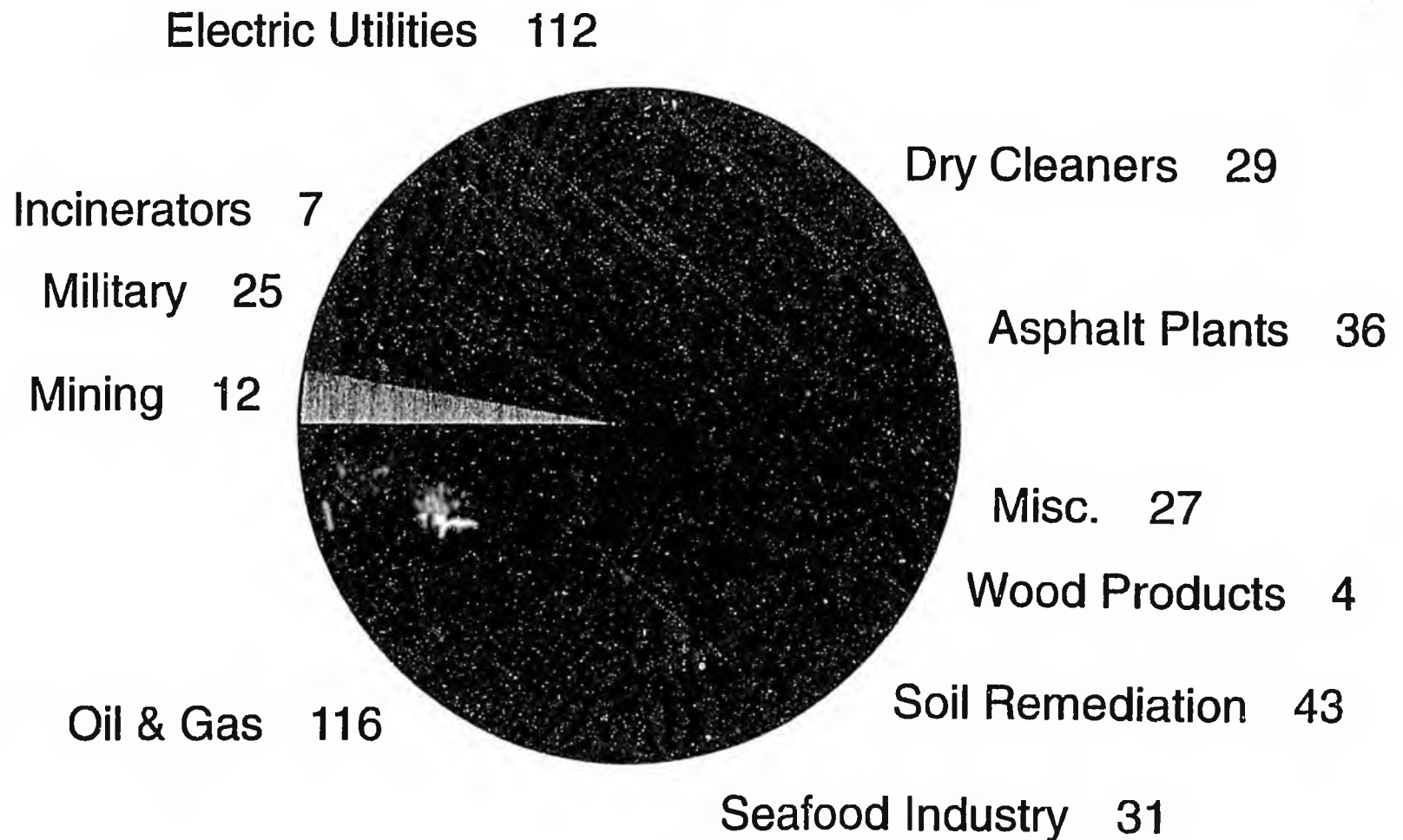
6. Streamlined administrative procedures for issuing construction permits

ADEC action - ADEC not against streamlining administrative procedures for certain types of permit actions.. Streamlining can be addressed in future regulation changes.

X. ADEC RECOMMENDATIONS FOR FUTURE ACTIONS

1. Alaska Statutes currently provide authorities to address Alaska Stakeholder's concerns/ all concerns can be addressed in administrative regulations
2. Alaska Statutes provide an adequate vehicle for state primacy

Who's Affected?



Total: 442 Alaska Facilities

What is DEC doing to hold down costs? (1 of 2)

✓ *DEC Reorganization*

→ AQM structured itself to meet Legislative intent and contain costs, minimize the number of staff performing air permit duties, and foster accountability, while improving the efficiency of government.

✓ *Small Business Assistance Program*

→ DEC established this technical assistance program to help small businesses comply with air quality laws, including permitting.

✓ *General Operating Permits*

→ AQM is developing general permits for certain facility types, including: electric utilities, asphalt plants, dry cleaners, and fuel storage facilities.

What is DEC doing to hold down costs? (2 of 2)

✓ *Oil Exploration Equipment Project*

→ AQM is exploring alternatives to permitting for transportable oil drilling rigs.

✓ *Inspector Certification Program*

→ AQM is developing a program to certify private air pollution inspectors to help the department and industry meet their compliance objectives.

✓ *Title V Avoidance Schemes*

→ AQM has established a legal framework that will help facilities with actual emissions less than 100 tpy avoid the Title V operating permit process.

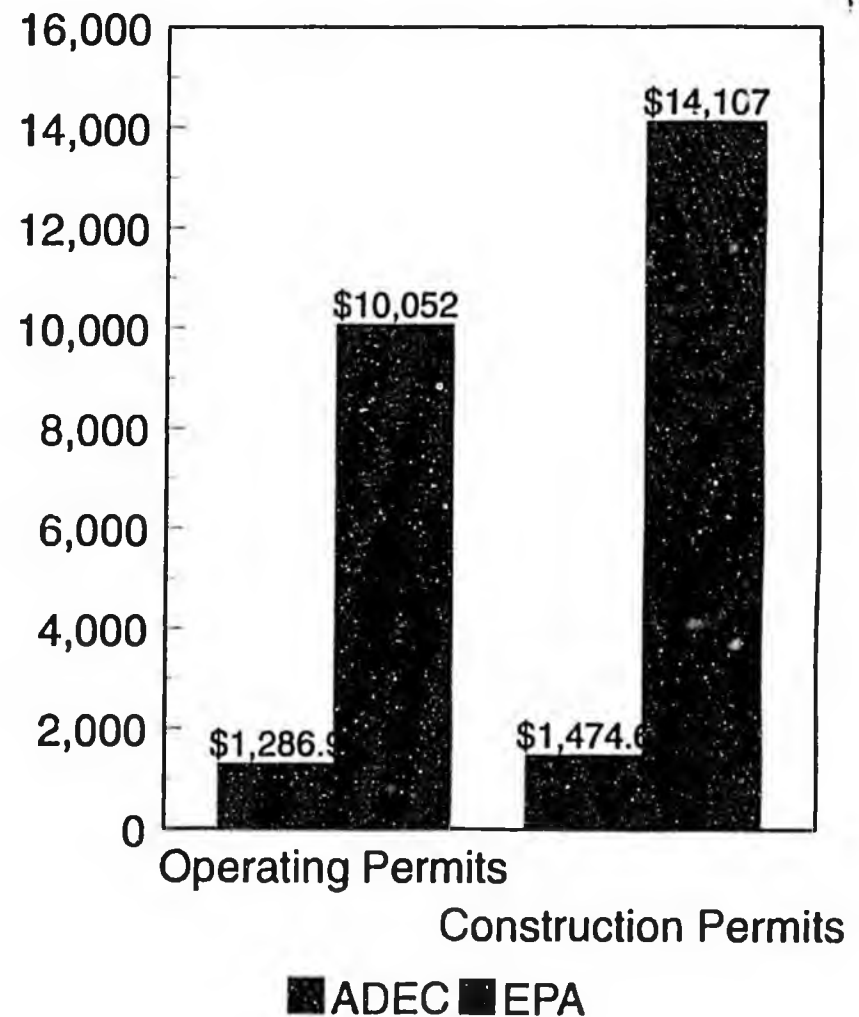
→ AQM is working with ARECA to implement this program.

✓ *Simplified Application Regulations*

→ AQM has developed plain-English permit application requirements that meet federal law.

How Much Will It Cost?

- DEC Program
 - \$2,761.5
 - Alaska Legislature controls revenue
- EPA Contractor Program
 - \$24,159.0
 - Federal government controls revenue



How Much Will It Cost?

- DEC Program
 - \$2,761.5
 - Alaska Legislature controls revenue
- EPA Staff Program
 - \$14,118.6
 - Federal government controls revenue

