SB 299

HOUSE COMMITTEE REPORT

(11)

Date Referred to Committee: April 6, 1998 **FURTHER REFERRALS:**

Date of Committee Action: 4/7/98

The FINANCE Committee considered: **SB 299**

SENATE BILL NO. 299 **WELL TEST FLARES & NONROAD ENGINES**

"An Act relating to the treatment of well test flares, nonroad engines, and aggregated fuel burning equipment associated with nonroad engines under the state's air quality control program; defining 'stationary source' for purposes of the state's air quality program."

recommends it be replaced with the following committee substitute _____ [ ] the same title [ ] a new title

[ ] additional referral to _____ Committee
[ ] attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)

[ ] fiscal note(s) _____

_____

[ ] zero fiscal note(s) _____

_____

APPROVES PREVIOUS: (Dept/Date)

[✓] fiscal note(s) SFC 4/2/98

_____

[ ] zero fiscal note(s) _____

_____

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
	Therriault			X	
	MILLER	X			
	martin			X	
	Kohring	X			
	grussendorf			X	
	FOSTER	X			

CO CHAIR'S SIGNATURE _____
Therriault

FISCAL NOTE

No. 2 **CORRECTED**

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BI Bill Version: SB 299
(S) Publish Date: 4/2/98

Revision Date:
Title: Well Test Flares and nonroad engines
Sponsor: Leman
Requester: Senate Finance Committee

Dept. Affected: Environmental Conservation
BRU: Air and Water
Component: Air Quality
Component Serial No.: 2061

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services	0.0					
Travel	0.0					
Contractual	11.6					
Supplies	0.0					
Equipment	0.0					
Land & Structures	0.0					
Grants & Claims	0.0					
Miscellaneous	0.0					
TOTAL OPERATING	11.6	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES [ ]						

FUND SOURCE (Thousands of Dollars)

10[illegible]eral Receipts	0.0					
10[illegible]ch	0.0					
[illegible]	11.6					
1003 GF/Program Receipts	0.0					
1037 GF/Mental Health	0.0					
1091 Designated Program Receipts	0.0					
TOTAL	11.6	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY97) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

DOL review	50 hrs @ 98.50	4.7
Advertising - public notices	5 papers/twice/@ $300	3.0
Public hearings		
room rental	4 @ $250	1.0
hearing officer	4 @ $250	1.0
Publication of new regulations		1.9
		11.6

Prepared By: SENATE FINANCE COMMITTEE

SENATOR DRUE PEARCE, CO-CHAIR
Date: 04/01/98
Phone: 465-4993

SENATOR BERT SHARP, CO-CHAIR
Date: 04/01/98
Phone: 465-3004

failed 2/6

4/7/98

AMENDMENT \

OFFERED IN THE HOUSE

TO: CSHB 299 BY: DAVIES

Page 2:

Delete lines 4 -6

Page 2:

Delete lines 19-20

WELL TEST FLARING OCCURRFNCE
1985-1995

YEAR	EXP WELL PERMITS /# TSTD	HOURS TESTED (#wells)	VOLUME FLARED MMcf	COMMENTS
1985	14/5	364(2)	11	
1986	3/1	614(4)	10	A well was tested this year that vented rather than flared the produced gas.
1987	12/3	240(1)*	6.2	*Duration of test is estimated
1988	11/2	223(4)	8.5	
1989	11/1	57(1)	3	This gas was probably shipped to the Lisburne facilities rather than flared.
1990	12/3			No available records to indicate any wells were flare tested this year.
1991	18/1	?(1)	0.5	This test may have been to a facility rather than a test flare.
1992	10/3	45(1)	0.4	
1993	16/4	33(1)	0.5	
1994	12/2			
1995	9/1			

4/7/98

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

April 7, 1998

Reply To
Attn Of: OAQ-107

Representative Mark S. Hanley
House of Representatives
State Capitol, Room 507
Juneau, AK 99801-1182

Representative Gene P. Therriault
House of Representatives
State Capitol, Room 511
Juneau, AK 99801-1182

Dear Representatives:

In response to a request from the State of Alaska, the U.S. Environmental Protection Agency, Region 10 (EPA) is providing comments on Senate Bill No. 299, a bill being considered by the Legislature of the State of Alaska. The proposed legislation would affect the authority of the Department of Environmental Conservation (the Department) with regard to the "treatment of well test flares, nonroad engines, and aggregated fuel burning equipment associated with nonroad engines under the state's air quality program." The following offers EPA's preliminary legal and programmatic concerns with this proposed legislation and how it may affect the air quality programs that EPA has approved, or are awaiting approval, under the federal Clean Air Act.

Our first concern with the proposed legislation is that it clearly will limit the Department's authority to administer the air quality programs in the manner specified in the State Implementation Plan (SIP) and the state's Prevention of Significant Deterioration (PSD) construction permit program that have been approved by EPA. We are also concerned that the Department will be constrained from implementing certain aspects of Alaska's operating permit program that has received interim approval from EPA. A number of other Clean Air Act programs are potentially affected as well.

We can see some difficulties with the way the bill totally exempts certain categories of air pollution sources from administrative oversight without clearly defining the equipment or type of facility covered by the exemption. The result is that the scope of the exemptions may be far broader than intended by the legislation. We are concerned that the bill may affect a number of facilities in addition to the oil drilling rigs which we understand have been the focus of this legislation. EPA understands the

types of equipment that can be included as "nonroad engines" which are considered "mobile sources." However, the term "aggregated fuel burning equipment associated with nonroad engines" is not defined and the reach of the proposed exclusion is uncertain. For example, it is not clear how the bill would affect the Department's authority over asphalt plants which use nonroad engines to produce electric power. Similarly, the bill could exempt all or parts of soil remediation facilities and the potentially toxic emissions from those operations.

The withdrawal of the Department's authority to permit or consider the impact of emissions from these broad categories of air pollution sources is a program implementation concern. Under the SIP and the PSD program approved by EPA, and the operating permits program which has received interim approval, there can be no exclusions for well test flares or "aggregated fuel burning equipment" as specified in the proposed legislation. Moreover, we are concerned that the bill would prevent the Department from evaluating all emission sources at a facility for purposes of determining permit requirements. Under the federal Clean Air Act requirements, the Department is expected to consider emissions from all sources and activities, even nonroad engines, when determining whether a preconstruction PSD permit should be issued. So, if the Legislature were to forbid the Department from including certain emissions or facilities in permit reviews, neither the Department nor EPA would be assured that facilities that must receive air permits were being adequately regulated, since portions of the facility emissions were not being counted. The proposed bill would not only prevent the Department from performing the work in accordance with the requirements approved by EPA, but the bill would prevent the Department from meeting the permitting requirements of the Federal Clean Air Act. Thus, this bill would jeopardize Alaska's authority to issue permits as required by the federal Clean Air Act.

Another area of great concern is that this bill would prevent the Department from implementing the measures EPA determined were necessary in the approved SIP under the Clean Air Act. The SIP approved by EPA has been designed to ensure attainment and maintenance of the National Ambient air Quality Standards (NAAQS) as required by Sections 110(a) and 172(c) of the Clean Air Act, to assure that the PSD increments are not exceeded as required by Sections 163 and 166, to prevent significant deterioration of air quality in general as required by Section 161, and to protect visibility in the mandatory federal Class I areas as required by Section 169A. The proposed bill would exempt broad categories of air polluting facilities and prevent the Department from considering emissions from those facilities as part of ambient air analyses. The result would be that the Department would not be fully characterizing emissions to ambient air, and would be unable to develop accurate emission inventories, thereby endangering the Department's ability to meet the Clean Air Act mandates.

In addition to the potential impacts the proposed bill would have on the Department's programs, it is important to recognize that the Clean Air Act provides

alternatives if a state fails to fulfill the Clean Air Act's requirements. First, as already noted, once a SIP has been approved by the EPA, the state must seek EPA approval of revisions to the SIP before the changes are effective. This would mean that EPA would disapprove revisions to adopt all or some of the terms of this proposed bill if, as it appears, some are inconsistent with or prohibited by the Clean Air Act. Until a SIP revision is approved, the existing SIP provisions remain legally in effect, and EPA may itself federally enforce the SIP requirements that were approved. A state may also be subject to a citizen suit to force implementation of a SIP that EPA has approved under the Clean Air Act, and EPA can be required to impose statutory sanctions or take other actions if a state fails to implement an approved SIP. In cases where a state fails to establish a SIP meeting the Clean Air act requirements, EPA may be required to promulgate a Federal Implementation Plan and itself manage air quality in the state.

Moreover, EPA's approval of any SIP revision must consider the State's statutory authority to regulate sources. Passage of this bill would impact EPA's review of the pending SIP revisions and would likely result in EPA's disapproval of Alaska's PSD permitting program and reinstatement of the EPA PSD program. In addition, passage of this bill would require EPA to initiate the process of rescinding the interim approval of Alaska's Title V operating permit program pursuant to 40 CFR 70.10.

As you can see from these comments, there are a number of aspects of this proposed bill that causes concern to EPA. Please let me know if you have any questions about this letter or would like more explanation of Region 10's views. If you have any questions please contact me at (206) 553-1234 or Anita Frankel, Director, Office of Air Quality, Region 10, at (206) 553-2963.

Sincerely yours,

Charles E. Findley
Deputy Regional Administrator

SENATOR LOREN LEMAN Northwest Anchorage

716 W 4th Ave, Suite 520, Anchorage, AK 99501 (907) 258-8189 Session: State Capitol, Juneau, AK 99801 (907) 465-2095

Sponsor Statement
SB 299: Well Test Flares & Nonroad Engines

Senate Bill 299 clarifies Alaska's air quality control program as it relates to the treatment of stationary and mobile sources of emissions in air quality control permitting. This legislation does not create an exemption from the Clean Air Act. It simply codifies in state statute the federally recognized distinction between mobile and stationary emission sources.

I sponsored this bill because as a member of the subcommittee that wrote the state's implementation of the Clean Air Act in 1993, I was aware that some issues would have to be resolved later. One of the major issues not addressed in the state's current air quality program was the treatment of stationary vs. **mobile** sources of emissions in air quality control permitting. I have monitored the Department of Environmental Conservation's public meetings on this subject over the last four years. Although the DEC has made this issue difficult, it can be resolved simply - by adopting the federal standard.

As early as 1990, the Environmental Protection Agency formally recognized a distinction between mobile and stationery sources of emissions. Most stationary sources are determined to be significant sources of emissions; ALL **mobile** sources have been determined by federal statutes and regs as **insignificant** and therefore outside of Title V permitting (under the Clean Air Act).

The ADEC regulators do not distinguish between mobile and stationary sources of emissions when determining whether an air quality control permit is required. Although state regulations clearly require ADEC to take into consideration the mobility of emission sources when determining whether to regulate those emissions, ADEC, in practice continues to treat mobile and stationary sources alike.

The federal program recognizes that the same emission control technologies used for oil and gas refineries and power plants (stationary sources) are not suitable for **mobile** applications like lawn mowers, snow machines, bulldozers, transportation engines, and marine vessels. The cost, as well as the size and weight of emission control technologies such as exhaust scrubbers, and emission collection systems limit their use with mobile sources of emissions. All **mobile** equipment must be manufactured to meet the EPA established emissions standards. So, appropriate emission control technologies are built into the mobile equipment as opposed to requiring modification of the equipment at the time of initiating operations.

The problem with the situation as it is now is that it results in confusion in the application of state law when stationary and mobile sources of emissions are regulated under the same permitting program. For example, the holder of the operating permit for the production facility **does not own or operate the mobile sources** of emissions that have been included on the permit.

SB 299 Testimony
House Finance Committee
Delivered by Al Ewing
April 7, 1998

Mr. Chairman, members of the Committee, good morning. For the record, my name is Al Ewing and I am the Deputy Commissioner of the Department of Environmental Conservation. I appreciate this opportunity to offer testimony on SB 299.

Governor Knowles has been very clear in word and deed that Alaska is open for business. The area-wide oil and gas leases on the Kenai Peninsula, in Cook Inlet, and on the North Slope and his actions to cause renewed leasing of the National Petroleum Reserve are illustrations of his commitment.

He has been equally clear that development in Alaska must be done right from an environmental perspective, and we have many illustrations of how that commitment is being kept, as well. These two guiding principles -"being open for business" and "doing it right" go hand in hand. Neither can endure for long without the other.

SB 299 is the exact opposite of doing it right! If enacted, it would prohibit regulation of oil drilling rigs which are significant sources of air pollution. Additionally, because of the imprecise wording of the bill, it can be interpreted to prohibit regulation of a wide range of significant sources of air pollution throughout the state. The bill would authorize, even mandate significant backsliding in Alaska's air quality. It would result in dirtier air for Alaska.

Even if its interpretation could be limited to oil drilling rigs, it would be unacceptable to the administration and I am confident it would also be unacceptable to the people living, working and playing on the Kenai Peninsula, in Cook Inlet, in the village of Nuiqsut and more generally on the North Slope.

The timing of this bill is also terrible and the signal it sends is even worse. It has the potential to jeopardize the progress we are making on NPRA leasing and the expectations we have for other development in Alaska.

Air pollution standards are designed to protect human health and the environment. They are not limited in their scope to protection of people who live in urban areas. All Alaskans have a right to clean air to breathe.

I would like to share with you a quote from a letter sent last year to Mr. Frank Brown, Vice President of ARCO Alaska. The letter was from Benjamin Nageak, Mayor of the North Slope

Borough and a quote from his letter follows:

> "There is a significant concern regarding air pollution impacts to the health of the Nuiqsut people. There is an increasing incidence of respiratory problems in Nuiqsut residents and the 'dark or yellow' cloud often seen over Prudhoe is now sometimes seen extending to Nuiqsut. In view of this, we are very worried that added air pollution from the Alpine development (processing plant, various emissions, etc.) will cause even more problems."

The North Slope, the Kenai Peninsula and Cook Inlet are designated "unclassifiable" areas for the pollutants of particular concern (sulfur dioxide and oxides of nitrogen) that are emitted by oil drilling rigs. We believe that these areas do currently comply with air quality standard though we have no data to confirm that belief.

However, state-of-the-art air quality models tell us that if oil drilling rigs are allowed to operate unregulated, they will, in many cases, cause violations of clean air standards.

The industry tells us we shouldn't regulate these rigs until we can confirm that there are air quality standard violations. The law tells us we have a responsibility to prevent violations of air quality standards. I think that is what the people who live, work and play in these areas expect as well. In my judgment, it would be very unwise to wait until the health and welfare of Alaskans is adversely impacted before taking action.

We understand that oil drilling rigs are mobile, and that they need the flexibility to move quickly from site to site. We also understand that they need flexibility in how they operate. Commissioner Brown and I spent a day on the North Slope recently to get a first hand view of these rigs and how they operate.

We have been working with the industry for the past 3 years to design regulations that would provide flexibility and necessary air quality controls. We have provided several alternative solutions. Each proposal has been rejected by the drillers as being unsatisfactory. Now we understand why --- their solution is no regulation.

We are prepared to continue working with the industry to find a workable solution, but any solution must be acceptable not only to the industry, but also to the people who work, play, and most importantly, live in and subsist off the natural resources of impacted areas. We are willing to participate in an industry-proposed facilitated stakeholder process to resolve the issue. Any solution must also result in compliance with air quality standards. The drillers responded with this legislation to gain exemption from the air quality standards.

We are given a variety of reasons why these rigs shouldn't be regulated. We are told that

they don't emit enough pollution to be a problem. The fact is that a single rig can emit as much pollution as more than a hundred city buses operating in a single, very crowded intersection. That is not an insignificant amount of pollution, as anyone who has gotten stuck behind a city bus can attest. And once again, state of the art air quality models, not surprisingly, predict violations of air quality standards if these rigs are allowed to operated without controls.

We are told that federal rules don't require these sources to be regulated. Well, because the ARCO Wart hog project was offshore it was permitted by the federal government. Let me assure you, there has been no non-road engine in the state of Alaska that has ever been regulated by the state to the degree the drilling rig on the Wart hog project was regulated. They required use of .06 % diesel fuel and established an exclusionary zone around the project to prevent public exposure to air pollutants expected to exceed air quality standards. And remember, this was an off shore project! Like it or not, this bill is a formula for EPA takeover of Alaska's air quality program, and with this bill in place, we would have no defense.

We are told that other drillers in other states aren't regulated. We have not done a broad survey to see what other states are doing, because frankly we are not looking for the lowest common denominator. Our objective is to maintain clean air in ways that are consistent with the laws of the land and with common sense.

In conversations with air program managers of other states, we find that drilling rigs and other non-road engines are using low sulfur fuel (.05%) because that is what is available in every state except Alaska. If we were using .05% sulfur fuel in Alaska, drilling rigs would be insignificant sources of S02 and would not require regulation for that pollutant.

I believe that drilling rigs in other states are complying with "best available technology" (BAT) standards. These BAT standards are designed to control NOx emissions. If drilling rigs were complying with BAT standards in Alaska they would be insignificant sources of NOx as well.

I am sure, if we looked, we could find drilling rigs in some states not using low sulfur fuel and not complying with BAT standards and not otherwise being regulated, but I would not find that a compelling reason to make that our standard for Alaska.

We are also told that rigs are constantly moving and consequently couldn't be much of a problem for very long even if standards were being violated. We understand that drilling rigs generally move around a lot, but we also know that some rigs remain on a site for extended periods of time -sometimes for a year or more. Mobility though, doesn't seem

like a very good justification for allowing violations of air quality standards. We have all seen the "beater" car going down the road spewing clouds of blue smoke as it goes. I don't know about you, but while I am glad to see it go, the fact that it is moving doesn't make me feel a whole lot better.

We are told we use too many conservative assumptions, and that our models don't accurately predict what happens in the real world. Our models are the best available in the world, and the assumptions we use are standard assumptions spelled out in law and used throughout the country.

We hope to be able to do ambient air quality monitoring in the future to assess air quality conditions and trends on the North Slope and elsewhere in the State. That will cost money that we don't currently have. In the mean time we will use the best tools we have ---- the models.

In summary, for all the reasons outlined, we very strongly oppose SB299. It is a major threat to the air quality of Alaska. It would put our citizens and our environment at risk. It is the opposite of "doing it right", and we believe it is correctly being labeled the DIRTY AIR BILL!

This concludes my testimony. I will be happy to respond to questions.

G:\COM\MS\SPEECHES\SB299.WPD

Alaska Support Industry
ALLIANCE
4220 'B' Street, Suite 200
Anchorage, AK 99503
Phone 907.563.2226
Fax 907.561.8870

THE ALLIANCE

... for responsible development of Alaska's Oil, Gas & Mineral Resources

April 7, 1998

Representatives Mark Hanley and Gene Therriault, Co-Chairs
House Finance Committee
State Capitol
Juneau, AK 99811

RE: *Support for SB 299 – An act relating to the treatment of well test flares, nonroad engines, and aggregated fuel burning equipment associated with nonroad engines under the state's air quality control program; defining 'statutory source' for purposes of the state's air quality program.*

Dear Members of the House Finance Committee:

The Alaska Support Industry Alliance (The Alliance) represents over 300 businesses that provide products and services to the oil and gas industry. We are oilfield service companies, transportation enterprises, wholesale and retail businesses, professional firms and private citizens. Collectively, we employ over 25,000 people in Alaska, 23,000 of which are permanent Alaska residents.

As a statewide, non-profit trade organization, The Alliance strongly advocates legislation and government policies that encourage responsible oil and gas exploration, development and production. Over the years, The Alliance has also adopted regulatory reform as a major priority. We oppose inequitable, unnecessary and overburdensome regulations that effectively stifle economic growth and prosperity. The Alliance agrees that the Alaska Department of Conservation's ongoing attempts to impose new state regulations on oil and gas drilling rigs (nonroad engines) is a classic case of the latter.

Over the past three years, many of our members have tried to resolve nonroad engine issues. Despite efforts to coordinate with the Alaska Department of Environmental Conservation through correspondence, meetings and work groups, a number of issues remain unresolved. The major issue for our members is ADEC's continued treatment of nonroad engines (drilling rigs, in particular) as stationary facilities, and the department's efforts to include nonroad engines in the stationary source permit structure.

Not only does this approach create an intolerable environment for drilling rig operations; it also ignores federal regulatory direction. In the 1990 Clean Air Act Amendments, the U.S. Environmental Protection Agency redefined "stationary source" to exclude nonroad engines. The federal Clean Air Act's Title V program regulates emissions from stationary sources through a permitting process. For mobile sources (including nonroad engines), the act regulates emission standards at the time of manufacture, so that further regulation through permits is unnecessary.

Drilling or well servicing rigs are considered to be nonroad engines; and accordingly, they should be treated the same as any other nonroad engine in the construction of a stationary source. Because ADEC continues to advise oil and gas operators to permit drilling rigs under its Title V authority, we believe legislation is needed to distinguish between mobile and stationary emission sources. For this reason, The Alliance supports passage of Senate Bill 299.

Thank you for your continued support of the oil and gas industry.

Sincerely,

Karen Cowart

Karen Cowart
General Manager

IADC SUMMARY OF DOCUMENTS SUBMITTED IN SUPPORT OF SB 299

I. Relevant Excerpts from the EPA Regulations Implementing the Clean Air Act Amendments of 1990.

- 40 C.F.R. Part 71, section 71.2. Definition of "insignificant activity or emissions" -- establishes an exemption from the documentation and reporting requirements of the federal operating permit program (Clean Air Act, Title V Stationary Source Permitting (implemented in 40 C.F.R. Part 71, section 71.5)).

- 40 C.F.R. Part 71, section 71.5. This section of the federal operating permit program qualifies mobile sources as insignificant activities.

- 40 C.F.R. Part 89, Subpart A, section 89.2. Definition of "nonroad engines" -- establishing a nonroad engine as a mobile source.

NOTE: These sections of the federal regulations clearly establish that nonroad engines are mobile sources (**NOT** stationary sources), which are insignificant activities not subject to the federal operating permit program.

Pursuant to the 1990 Clean Air Act Amendments, EPA cannot require states to directly regulate nonroad engines under programs designed to regulate stationary sources.

II. December 30, 1997 Direct Final Rule.

- The December 30, 1997 Direct Final Rule clarifies that the nonroad engine preemption of the 1990 Clean Air Act Amendments applies to **ALL** nonroad engines and nonroad vehicles, not just those manufactured after 1990. (The nonroad engine preemption of the 1990 Clean Air is codified in section 209(e), which states, in pertinent part, "All states are preempted from adopting emission standards and other requirements for new nonroad engines . . . .").

- The December 30, 1997 Direct Final Rule further explains how states **MAY** adopt and enforce emissions standards for nonroad engines and vehicles, and establishes a procedure for promulgating such regulations beyond the federal minimum requirements.

NOTE: The December 30, 1997 Direct Final Rule **DOES NOT** mandate that states adopt and enforce standards and other requirements for nonroad engines. The Direct Final Rule simply says that states "may" develop nonroad engine emission restrictions beyond those established by

the Clean Air Act. Only California has adopted such restrictions in excess of the federal minimums.

III. Undated Summary of other oil producing states' treatment of drilling rig engines.

- A survey of other oil producing states' air quality control statutes and regulations demonstrates that these states have embraced the federal mandate that mobile emission sources (i.e., nonroad engines) be regulated at the point of manufacture and need not be further regulated under the Clean Air Act stationary source permitting program.

- Only four states have addressed drilling rig engine emissions in statute or regulation. Three states (Colorado, Montana and North Dakota) specifically have exempted drilling rig engines from permitting requirements. The fourth state (Texas) only requires a permit if an engine stays at a location longer than six months.

VI. February 21, 1997 letter from Janet Platt (BPXA) to John Stone (ADEC).

- In this letter, BPXA concludes that "nonroad engines are not regulated sources requiring identification or any other authorization to construct or operate under the ADEC's air quality laws and regulations."

V. March 3, 1997 letter from John Stone (ADEC) to Janet Platt (BPXA).

- Quoting directly from BPXA's February 21, 1997 letter, ADEC confirms BPXA's conclusion that "nonroad engines are not regulated sources requiring identification or any other authorization to construct or operate under the Department of Environmental Conservation's air quality laws and regulations."

VI. July 24, 1997 letter from Michael Conway (ADEC) to Steven Taylor (BPXA).

- This letter from ADEC, dated July 24, 1997, states that ADEC "is committed to working a longer term solution to this issue with all interested parties by establishing and leading a workgroup." Despite ADEC's July 24, 1997 commitment to establish a workgroup to address the nonroad engine issue, no such action has taken place.

NOTE: As of the date of this ADEC letter (July 24, 1997), the nonroad engine issue had been under consideration by ADEC since at least early 1996.

VII. September 23, 1997 letter from John Stone (ADEC) to Bonnie Thie (EPA Region 10).

- In this letter, ADEC states that mobile internal combustion engines (e.g., nonroad engines) are specifically exempt from being considered as fuel-burning equipment.

VIII. December 29, 1997 letter from John Stone (ADEC) to Janet Platt (BPXA).

- Notwithstanding ADEC's September 23, 1997 letter to EPA, in this December 29, 1997 letter, ADEC contends that nonroad engines are considered to be fuel-burning equipment and must be included as stationary sources.

IX. March 16, 1998 IADC Board Resolution 98-1.

- By a unanimous vote, the Board of Directors of the Alaska Chapter of the International Association of Drilling Contractors voted to support passage of SB 299.

From the Federal Register; Federal Operating Permits Program; Proposed Rule: April 27, 1995:

Preamble.

"The EPA proposes to include a short list of broadly-defined insignificant activities that are frequently included in State part 70 program submittals." (60 FR 20813)

40 CFR Part 71, §71.2, Definitions.

Insignificant activity or emissions means those activities, operations, and emissions levels which meet the criteria listed in §71.5(g) for exemption from the documentation and reporting requirements of §71.5(f). (60 FR 20828)

From the Federal Register; Federal Operating Permits Program; Final Rule; July 1, 1996:

40 CFR Part 71, §71.5, Permit Applications.

(11) *Insignificant activities and emissions levels.* The following types of insignificant activities and emissions levels need not be included in permit applications. ....

(i) *Insignificant activities.* Information concerning the following activities need not be provided in the application:

(A) Mobile sources;

(B) ..... (61 FR 34235)

From 40 CFR Part 89, Subpart A, §89.2, Definitions:

Nonroad engine means:

(1) Except as discussed in paragraph (2) of this definition, a nonroad engine is any internal combustion engine:

(i) in or on a piece of equipment that is self-propelled or serves a dual purpose by both propelling itself and performing another function (such as garden tractors, off-highway mobile cranes and bulldozers); or

(ii) in or on a piece of equipment that is intended to be propelled while performing its function (such as lawnmowers and string trimmers); or

(iii) that, by itself or in or on a piece of equipment, is portable or transportable, meaning designed to be and capable of being carried or moved from one location to another. Indicia of transportability include, but are not limited to, wheels, skids, carrying handles, dolly, trailer, or platform.

(2) An internal combustion engine is not a nonroad engine if:

(i) the engine is used to propel a motor vehicle or a vehicle used solely for competition, or is subject to standards promulgated under section 202 of the Act; or

(ii) the engine is regulated by a federal New Source Performance Standard promulgated under section 111 of the Act; or

(iii) the engine otherwise included in paragraph (1)(iii) of this definition remains or will remain at a location for more than 12 consecutive months or a shorter period of time for an engine located at a seasonal source. A location is any single site at a building, structure, facility, or installation. ... This paragraph does not apply to an engine after the engine is removed from the location.

[Federal Register: December 30, 199', (Volume 62, Number 249)]
[Rules and Regulations]
[Page 67733-67736]
From the Federal Register Online via GPO Access [wais.access.gpo.gov]
[DOCID:fr30de97-18]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 85 and 89

[AMS-FRL-5939-5]

Control of Air Pollution: Emission Standards for New Nonroad Compression-Ignition Engines at or Above 37 Kilowatts; Preemption of State Regulation for Nonroad Engine and Vehicle Standards; Amendments to Rules

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: This direct final rulemaking, consistent with an order and opinion from the U.S. Court of Appeals for the District of Columbia Circuit, amends EPA's **regulations** setting emission standards for large (at or above 37 kilowatts) nonroad compression ignition engines, and EPA's **regulations** establishing procedures for EPA authorization of California nonroad emission standards. Specifically, EPA is withdrawing portions of an interpretive rule which set forth the Agency's position on the Clean Air Act (Act) regarding the status of certain internal combustion engines manufactured before the effective date of the final rulemaking promulgating EPA's definition of nonroad engine. Additionally, consistent with the D.C. Circuit opinion, EPA also is amending the remaining text of this interpretive rule, as well as EPA's **regulations** issued under section 209(e) of the Act regarding the Agency's California nonroad standards authorization process, to clarify that California must seek authorization from EPA prior to enforcing standards and other requirements relating to emissions from any nonroad vehicles or engines, and not just new nonroad vehicles and engines, which was the original language used in these **regulations**.

DATES: This direct final rule is effective on March 2, 1998 unless notice is received by January 29, 1998 that any person wishes to submit adverse comments and/or request a hearing. Should EPA receive such notice, EPA will publish a timely document in the Federal Register withdrawing this direct final rule. Any party who sends EPA notice of intent to submit adverse comments must in turn submit the adverse comments by March 2, 1998, unless a hearing is requested. Any party objecting to this direct final rule, at the time it notifies EPA of its intent to submit adverse comments, can request EPA to hold a public hearing on this action. If a hearing is requested, it will take place on March 2, 1998, and interested parties will have an additional 30 days after the hearing (until March 30, 1998) to submit comments on any information presented at the hearing. Because no hearing will occur absent a request for one, interested parties should contact Robert M. Doyle at the number listed below after January 29, 1998 to determine whether a hearing will take place.

ADDRESSES: Written comments should be submitted (in duplicate if possible) to: Air Docket Section (6102), Attention: Docket No. A-91-24, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, or hand-delivered to the Air Docket at the above address, in Room M-1500, Waterside Mall. A copy of written comments should also be submitted to Robert M. Doyle at the address below.

FOR FURTHER INFORMATION CONTACT: Robert M. Doyle, Attorney/Advisor, Engine Programs and Compliance Division (6403J), U.S. Environmental Protection Agency, 401 M. Street, S.W., Washington, D.C. 20560, (202) 564-9258, FAX (202) 233-9596, E-Mail, Doyle.Robert@EPAMAIL.EPA.GOV.

SUPPLEMENTARY INFORMATION:

I. Regulated Entities

Entities potentially regulated by this direct final rule are the California Air Resources Board and other state air quality agencies. Regulated categories and entities include:

Category	Examples of regulated entities
State and local government.....	California Air Resources Board. State and local air quality agencies.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. If you have questions regarding the applicability of this action to a particular product, consult the person listed in the preceding FOR FURTHER INFORMATION CONTACT section.

II. Obtaining Electronic Copies of Documents

Electronic copies of the preamble and the regulatory text of this direct final rule are available via the Internet on the Office of Mobile Sources (OMS) Home Page (http://www.epa.gov/OMSWWW/). Users can find these documents and other nonroad engine and vehicle related information and documents by accessing the OMS Home Page and looking at the path entitled ``Nonroad engines and vehicles.'' This service is free of charge, except for any cost you already incur for Internet connectivity. The official Federal Register version is made available on the day of publication on the primary Web site (http://www.epa.gov/docs/fedrgstr/EPA-AIR/).

Please note that due to differences between the software used to develop the documents and the software into which the documents may be downloaded, changes in format, page length, etc., may occur.

III. Legal Authority and Background

Authority for the actions set forth in this direct final rule is granted to EPA by sections 209, 213, and 301 of the Clean Air Act as

EPA - NRE exclusion from

amended (42 U.S.C. 7543, 7547, and 7601).

A. Amendments and Redesignation of Appendix Containing Interpretive Rule on Date and Scope of Nonroad Preemption

On May 17, 1993, EPA proposed rules setting standards for emissions from nonroad compression ignition engines at or above 37 kilowatts (approximately 50 horsepower) in power ("large nonroad engine rule").¹ In this NPRM, EPA was faced with the question (among many issues) of the manner and the extent to which states could regulate nonroad engines, which some states and localities previously had regulated as stationary sources. EPA noted that while emissions from nonroad engines are excluded from the Act's section 302(z) definition of stationary source,² the exclusion would apply only to those nonroad internal combustion engines that are manufactured after the effective

5/17/93 - "large NRE rule"

[[Page 67734]]

date of the large nonroad engine rule. EPA also noted that nonroad engines may be subject to state-imposed in-use restrictions such as limits on hours of use and may be subject to state regulation under section 209(e)(2).³

\1\ 58 FR 28809 (May 17, 1993).

\2\ Section 302(z) states that the ``term `stationary source' means generally any source of an air pollutant except those emissions resulting directly from an internal combustion engine for transportation purposes or from a nonroad engine or nonroad vehicle as defined in section 216.''

NOTE

\3\ Section 209(e)(2)(A) directs EPA to authorize California to adopt and enforce standards and other requirements for nonroad engines and nonroad vehicles (with some categorical exceptions) if California's regulations meet the criteria set forth in the Act. Other states may adopt EPA-authorized California nonroad engine or vehicle standards if the states comply with the criteria listed in section 209(e)(2)(B).

During the rulemaking, EPA received comments from several parties objecting to its interpretation of the correct effective date. These parties generally asserted that the language in section 302(z) applied to all nonroad engines in existence on or after November 15, 1990, the date of the enactment of the Clean Air Act Amendments of 1990 (CAAA). The effect of this assertion would be that states would be preempted from promulgating emission standards or other requirements for nonroad engines produced after that date.

On June 17, 1994, EPA published a final rule ⁴ setting the standards for the large nonroad compression ignition engines; the effective date for this rule was July 18, 1994, 30 days after its Federal Register publication. In that rule, EPA finalized the definition of ``nonroad engine,'' which determined whether certain engines should be considered ``nonroad engines'' or ``stationary sources.'' After careful consideration of the comments on the rule's preemption date briefly summarized above, EPA added an interpretive rule in the form of an appendix (Appendix A) to the regulations summarizing EPA's decisions on these preemption issues. In Appendix A, EPA noted basically that it interprets the Act as not precluding state

regulation of internal combustion engines manufactured prior to July 18, 1994, except that state regulation of such engines that are used in motor vehicles or vehicles used solely for competition is precluded. Additionally, EPA noted that it believes that states are not precluded under section 209 of the Act from regulating the use and operation of nonroad engines. Appendix A has been codified as part of the large nonroad engine rule and appears in the current volume of 40 CFR part 89 (July 1, 1996).

\4\ 59 FR 31306 (June 17, 1994).

On or before August 16, 1994, nine parties timely filed petitions with the United States Court of Appeals for the D.C. Circuit for review of the large nonroad engine rule, and of the related rule establishing the scope of preemption of state or local standards regulating nonroad engines and the procedures that California must follow when seeking EPA authorization to adopt and enforce California-specific nonroad engine standards under section 209(e) of the Act. These nine petitions were consolidated as Engine Manufacturers Association, et. al., v. EPA, Docket No. 94-1558, (EMA v. EPA). The petitioners challenged several aspects of these rules, including the EPA interpretation contained in Appendix A. After preliminary discussions with petitioners, EPA decided that it was appropriate to review its interpretation that preemption of state and local regulations did not effect engines manufactured prior to July 18, 1994. Therefore, on September 19, 1995, EPA filed with the Court a Motion for Vacatur and Remand of its interpretation. The consolidated petitioners did not oppose EPA's Motion.

On October 20, 1995, the Court granted EPA's Motion and ordered that paragraphs 1 and 2 of Appendix A be vacated and remanded to the Agency for further consideration. Today's direct final rule implements the order of the Court by removing paragraphs 1 and 2 from Appendix A, and retitling Appendix A to be descriptive of its revised content.

EPA notes that although paragraphs 1 and 2 of Appendix A are now vacated, paragraph 3 remains effective, though this rule revises that paragraph. This paragraph, which appears in the revised text of Appendix A, contains EPA's determination that states are not precluded from regulating the use of nonroad engines. On July 12, 1996, the Court handed down its decision in EMA v. EPA, and held that EPA had made a reasonable interpretation of the Act in finding that the preemption of state regulations did not extend to restrictions on the use of nonroad engines.⁵ EPA, however, has deleted the last two sentences of paragraph 3 and added a new sentence consistent with the Court's ruling on the scope of implied preemption of state standards, discussed in detail in Section B. below.

\5\ EMA v. EPA, 88 F.3d 1075, 1093-94 (D.C. Cir. 1996).

B. Scope of Implied Preemption of State Standards

Under section 209(e) of the Act as amended, EPA was required to ''issue regulations to implement'' subsection (e), which addressed the ability of states to adopt emission standards and other requirements for nonroad engines and vehicles. Under section 209(e): (1) All states are preempted from adopting emission standards and other requirements for new nonroad engines used in construction or farm equipment or

vehicles which are smaller than 175 horsepower and for new locomotives and new engines used in locomotives; (2) California may adopt and enforce standards and other requirements for nonroad engines other than the specifically preempted categories listed directly above, after receiving authorization to do so from EPA; and (3) other states may adopt California's nonroad emission standards and other requirements after EPA has authorized the standards and other requirements and the adopting state has allowed the statutorily required two-year leadtime.

On July 20, 1994, EPA promulgated regulations which established the process under which the Agency would authorize California nonroad emission standards and other requirements (section 209(e) regulations). During the rulemaking, EPA addressed the issue of the scope of the Act's preemption on state regulation of nonroad engines and vehicles. Section 209(e)(2) directs EPA to authorize, when all conditions are met, California emission standards for ``any nonroad vehicles or engines other than [the new under 175 hp farm and construction equipment engines and the new locomotive engines] * * * (emphasis added).'' EPA interpreted the implied preemption of state standards in section 209(e) to apply only to new nonroad engines rather than any nonroad engines, which could include both new and used engines. In the Preamble to these regulations, EPA stated clearly that it believed ``that the requirements of section 209(e)(2) apply only to new nonroad engines and vehicles (emphasis added).'' <SUP>6</SUP> Accordingly, the regulations required California to seek EPA authorization only for ``standards and other requirements relating to the control of emissions from new nonroad vehicles or engines that are otherwise not preempted.'' ⁷

\6\ 59 FR 36969, 36973 (July 20, 1994).

\7\ 40 CFR 86.1604(a) (July 1, 1996).

As discussed above, petitions to the D.C. Circuit for review of the section 209(e) regulations and the large nonroad engine rule were filed and consolidated as EMA v. EPA. In this litigation, the petitioners agreed with EPA that section 209(e)(2) implied preemption of state regulation of nonroad engines and vehicles, but argued that the preemption applied to standards for all nonroad

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sources, both new and non-new, because the statute did not include the word ``new'' in specifying what nonroad vehicles and engines for which California and other states could promulgate standards,⁸ and for other reasons. In its opinion in this case handed down July 12, 1996, the Court agreed with the petitioners on this particular point, and granted the EMA petition ``insofar as they challenge the limitation of the implied section 209(e)(2) preemption to new nonroad sources.'' ⁹

\8\Section 209(e)(2)(A) states ``(I)n the case of any nonroad vehicles or engines other than those referred to in subparagraph (A) or (B) of paragraph (1), * * *''

\9\EMA v. EPA, 88 F.3d at 1094.

Today's direct final rule implements the opinion of the Court

regarding the scope of preemption of section 209(e)(2) by amending the language of the implementing **regulations** to reflect that California must request authorization for its emission standards and other related requirements for all nonroad vehicles and engines.¹⁰ EPA has also deleted the final two sentences of Appendix A, dealing with the ability of states to require retrofit technologies, as the language as currently written is inconsistent with the opinion of the Court, and added a sentence which reflects the Court's holding by noting that states may adopt only those retrofit requirements for nonroad engines identical to California requirements which have been authorized by EPA under section 209 of the Act. EPA has also modified the language of Appendix A to state more simply and clearly that state regulation of the use and operation of nonroad engines can occur when the engines are no longer new.

\10\ EPA has also amended the text of the implementing **regulations** in appropriate places by changing ``states'' to ``states and any political subdivision thereof'' to make this language fully consistent with the applicable language of section 209(e) of the Act. Additionally, EPA has revised the Title of Part 85 to reflect that this Part contains **regulations** covering both onroad vehicles and engines and nonroad vehicles and engines. These amendments were not directed by the Court, but are being done as part of today's direct final rule for editorial efficiency.

C. Public Participation and Effective Date

EPA is publishing this rule without prior proposal because EPA views these amendments as noncontroversial and anticipates no adverse comments. However, in the event that adverse or critical comments are filed, EPA has prepared a Notice of Proposed Rulemaking (NPRM) proposing the same amendments. This NPRM is contained in a separate document in this Federal Register publication. The direct final action will be effective March 2, 1998 unless adverse or critical comments are received by January 29, 1998. If EPA receives adverse or critical comments on the revisions discussed in this section, the revisions receiving adverse comment will be withdrawn before the effective date. In case of the withdrawal of all or part of this action, the withdrawal will be announced by a subsequent Federal Register document. All public comments will then be addressed in a subsequent final rule based on the accompanying proposed rule. EPA will not implement a second comment period on this action. Any parties interested in commenting on this rule should do so at this time. If no adverse comments are received, the public is advised that the rule will be effective March 2, 1998.

Adverse Comments?

EPA is continuing to review its policy concerns and options regarding the date of preemption for the nonroad engine rules. EPA may in the future determine that it is appropriate to issue a new interpretation to address this issue.

IV. Administrative Requirements

A. Administrative Designation

Under Executive Order 12866 (58 FR 51735 (October 4, 1993), the Agency must determine whether the regulatory action is ``significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ``significant regulatory action'' as

one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or,

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a ``significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Reporting and Recordkeeping Requirements

This rule does not change the information collection requirements submitted to and approved by OMB in association with the large nonroad engine final rulemaking (59 FR 31306, June 17, 1994).

C. Regulatory Flexibility

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. This rule will not have a significant adverse economic impact on a substantial number of small businesses. The only revisions EPA is making in this final rule are pursuant to the decision of the Court. These changes are directed at state and local governments and are expected to affect few, if any, existing or future local or state regulations.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a ``major rule'' as defined by 5 U.S.C. 804(2).

E. Unfunded Mandates Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (``Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that this rule does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector.

List of Subjects

40 CFR Part 85

Environmental protection, Administrative practice and procedure, Air pollution control, Federal preemption, Motor vehicle pollution, Nonroad engine and vehicle pollution,

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Reporting and recordkeeping requirements, State controls.

40 CFR Part 89

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential business information, Imports, Incorporation by reference, Labeling, Nonroad source pollution, Reporting and recordkeeping requirements.

Dated: December 17, 1997.
Carol M. Browner,
Administrator.

For the reasons set forth in the preamble, parts 85 and 89 of title 40 of the Code of Federal Regulations are amended as follows:

NOTE

PART 85--CONTROL OF AIR POLLUTION FROM MOBILE SOURCES

1. The heading for part 85 is revised to read as set forth above.

Subpart Q--Preemption of State Standards and Waiver Procedures for Nonroad Engines and Nonroad Vehicles

2. The authority citation for part 85 is revised to read as follows:

Authority: 42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7543, 7547, and 7601(a).

3. Section 85.1603 is amended by revising paragraphs (b), (c) and (d) to read as follows:

Sec. 85.1603 Application of definitions; scope of preemption.

* * * * *

(b) States and any political subdivisions thereof are preempted from adopting or enforcing standards or other requirements from new engines smaller than 175 horsepower, that are primarily used in farm or construction equipment or vehicles, as defined in this subpart.

(c) States and any political subdivisions thereof are preempted from adopting or enforcing standards or other requirements relating to the control of emissions from new locomotives or new engines used in locomotives.

(d) No state or any political subdivisions thereof shall enforce

any standards or other requirements relating to the control of emissions from nonroad engines or vehicles except as provided for in this subpart.

4. Section 85.1604 is amended by revising paragraph (a) to read as follows:

Sec. 85.1604 Procedures for California nonroad authorization requests.

(a) California shall request authorization to enforce its adopted standards and other requirements relating to the control of emissions from nonroad vehicles or engines that are otherwise not preempted by Sec. 85.1603(b) or Sec. 85.1603(c) from the Administrator of EPA and provide the record on which the state rulemaking was based.

* * * * *

5. Section 85.1606 is amended by revising the introductory text to read as follows:

Sec. 85.1606 Adoption of California standards by other states.

Any state other than California which has plan provisions approved under Part D of Title I of the Clean Air Act may adopt and enforce emission standards for any period, for nonroad vehicles and engines subject to the following requirements:

PART 89--CONTROL OF EMISSIONS FROM NEW AND IN-USE NONROAD ENGINES

1. The authority citation for part 89 continues to read as follows:

Authority: Sections 202, 203, 204, 205, 206, 207, 208, 209, 213, 215, 216, and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7521, 7522, 7523, 7524, 7525, 7541, 7542, 7543, 7547, 7549, 7550, and 7601(a)).

2. Appendix A to Subpart A is revised including the appendix heading to read as follows:

Appendix A to Subpart A--State Regulation of Nonroad Internal Combustion Engines

This appendix sets forth the Environmental Protection Agency's (EPA's) interpretation of the Clean Air Act regarding the authority of states to regulate the use and operation of nonroad engines.

EPA believes that states are not precluded under section 209 from regulating the use and operation of nonroad engines, such as regulations on hours of usage, daily mass emission limits, or sulfur limits on fuel; nor are permits regulating such operations precluded, once the engine is no longer new. EPA believes that states are precluded from requiring retrofitting of used nonroad engines except that states are permitted to adopt and enforce any such retrofitting requirements identical to California requirements which have been authorized by EPA under section 209 of the Clean Air Act.

[FR Doc. 97-33769 Filed 12-29-97; 8:45 am]
BILLING CODE 6560-50-P

Final rule does not mandate regulation of the use and operation of NREs.

DRILLING RIG ENGINES

A. The following states, one way or another, address drilling rig engines in their state construction permit regulations:

1. Colorado: Specifically exempt drilling rig engines from permitting requirements.

2. Montana: Exempt drilling rig engines with the potential to emit less than 100 tpy of any pollutant.

3. North Dakota: There is a provision which exempts oil and gas production facilities from permitting requirements, if the emissions are less than 100 tpy of any criteria pollutant, or 10/25 tpy of HAPs. It is not clear whether this provision covers drilling rigs.

4. Texas: If an engine stays at a location for a duration less than 6 months, it is considered a temporary, not stationary, facility. It is therefore not required to have a permit.

B. Other states reviewed (Kansas, Louisiana, Nebraska, New Mexico, Oklahoma, Utah, and Wyoming): Although regulations in those states are acquiescent with regard to drilling rig engine issue, neither operators nor drilling contractors have ever been required to obtain state construction permits for drilling rig engines. It appears that EPA's definition of a non-road engine are accepted by those states. Since drilling rig engines are considered non-road engines, not stationary sources, state construction permits are not required.

SUMMARY

General Comments

1. Construction permit requirements in ten states have been reviewed: Colorado, Kansas, Louisiana, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, Texas and Utah.

2. All states reviewed require a construction permit for the construction of a new source or modification of an existing source, from which air contaminants are to be emitted.

3. All states reviewed allow exemptions for "de minimis emissions", except for Texas. "De minimis exemptions" exempt constructions or modifications with emissions below certain threshold from permitting process.

4. The construction permit programs in some states allow streamlined permitting process for E&P, such as a standard permit, general permit, standard exemption, streamlined permit, or permit-by-rule. The standard exemptions in Texas more or less fit in this category.

5. General practice by the industry varies depending on state agency's interpretation of the regulations and their enforcement activities. In states where agency does not interpret or enforce the rules to the letter of the law, operators' permitting practice generally reflects agency's interpretation and enforcement policy.

Individual States -- The exemption levels are listed below:

A. Colorado
   1. De minimis emission exemption:
      a. Attainment area: < 5 tpy VOCs or PM10; 10 tpy each or TSP, CO, SO2, NOx; 200 lb/yr lead.
      b. Total facility uncontrolled: < 2 tpy H2S, total reduced sulfur.
   2. "Permit-by-rule": some exemptions in the regulation can be considered as "permit-by-rule":
      a. Internal combustion engines:
         (1) Portable drilling rigs;
         (2) Emergency generators < 250 hrs/yr;
         (3) Emissions < 5 tpy or rated at < 50 hp.
      b. Oil and gas E&P operations shall provide written notice of proposed drilling locations prior to drilling. Air Pollutant Emission Notice are not required until after drilling, workovers, completions, and testing are finished.

B. Kansas

   1. De minimis emission exemption:
      a. A construction permit is required, if the PTE > 15 tpy PM10; 25 tpy PM; 40 tpy SOx, VOC, NOx; 100 tpy CO; 10/25 tpy HAPs.

b. An approval is required (even though a permit is not required), if the PTE > 5 lb/hr PM10; 2 lb/hr PM and SOx; 50 lb/hr CO and NOx; 50 lb/hr VOC in attainment area.

2. Currently, there are no general permits for construction permit program.

C. Louisiana

1. De minimis emission exemption: < 5 tpy of any regulated air pollutant, and less than the de minimis emission rate for Louisiana toxic air pollutants (0.13 tpy benzene; 5 tpy each for toluene, ethylbenzene, xylene, and n-hexane).
2. Small source permit (a streamlined process): < 25 tpy of any regulated pollutant.
3. There is a general permit for E&P.

D. Montana

1. De minimis emission exemption:
   a. PTE < 25 tpy of any regulated pollutant;
   b. drilling rig stationary engines with the PTE < 100 tpy any pollutant; and
   c. Changes at a site holding a construction, whose increase in PTE < 15 tpy any pollutant.
2. No permit by rule available.

E. Nebraska

1. De minimis emission exemption: PTE < 15 tpy PM10; 25 tpy PM; 40 tpy VOC, SO2, NOx; 54 tpy CO; 2.5/10 tpy HAPs.
2. No permit by rule available.

F. New Mexico

1. De minimis emission exemption:
   a. 25 tpy or 10 lb/hr of any regulated pollutants.
   b. Non-major HAP sources.
2. Streamlined permitting process allowed for internal combustion engines.

G. North Dakota

1. De minimis emission exemption for oil and gas production facilities: < 100 tpy criteria pollutants, 10/25 tpy HAPs.
2. Exemption for fossil fuel burning equipment which meets all following:
   a. Heat input < 10 MMBtu/hr for a single unit, or all units at the site;
   b. Actual emission < 25 tpy, PTE < 100 tpy any contaminant.

H. Oklahoma

1. De minimis emission exemption: 1) < 1 lb/hr of any criteria pollutant; 2) toxics < de minimis level (benzene: 1200 lb/yr, 0.57 lb/hr); ant 3) not a NSPS or NESHAP source.
2. Many E&P operators follow a streamlined procedure for Title V in addressing pre-construction permit:
   a. Submit a letter only if the PTE 0-50 tpy any criteria pollutant, or 0-5 tpy HAPs.
   b. Submit a letter with supporting documentation if the PTE 50 - 100 tpy any criteria

pollutant, or 5-10 typ HAPs.

I. Texas ["Temporary engines" do not need permit. "Temporary" oil and gas facilities (<90 days) can use Standard Exemption 67.]

1. There are no "de minimis emission exemptions". Standard exemptions are "permit by rule".
2. In general, standard exemptions are allowed for E&P sources if 1) emissions are: <= 250 tpy CO or NOx; 25 tpy VOCs, SO2, PM10 or any other pollutant ; 2) not subject to PSD or non-attainment NSR; 3) at least one unit at the site has been through public notification process; and 4) all conditions of a specific Standard Exemptions (SE #66 for E&P) are met.
3. If a source can not meet all conditions of a standard exemption, it is required to obtain a permit (either a regular permit or a standard). There is a standard permit available for E&P sources. A standard permit is a "permit by rule". If an operator chooses to use the standard permit, he does not need to go through the public notification process, because it has been done during the rule-making.

J. Utah

1. De minimis emission exemption: Exempt from the requirements for notice of intent and approval order, if
   a. PTE < major source threshold (100 tpy criteria; 10/25 tpy HAPs); and
   b. Actual emissions: < 5 tpy criteria pollutants; 500/2000 lb/yr HAPs or non-criteria pollutants.

BP EXPLORATION

BP Exploration (Alaska) Inc.
900 East Benson Boulevard
P.O. Box 196612
Anchorage, Alaska 99519-6612
(907) 561-5111

By Certified Mail # P423 342 031

See J. Stone file (3/3/97) confirming BPX's position herein.

February 21, 1997

Mr. John Stone
Alaska Department of Environmental Conservation
Division of Air and Water Quality
410 Willoughby Avenue, Suite 105
Juneau, AK 99801-1795

Niakuk Development Drilling
Request for Determination on Air Permit Requirements

Dear Mr. Stone:

BP Exploration (Alaska) Inc. (BPX) has retained a contractor to drill production wells at the Niakuk Development on the North Slope of Alaska. Drilling has been ongoing at Niakuk's Heald Point since April 20, 1996 with only occasional interruptions to move the rig to a new well or conduct rig maintenance.

Prior to the commencement of drilling, BPX contacted the Alaska Department of Environmental Conservation's (ADEC) air quality staff about potential air permit requirements. We were advised that no air quality construction permit would be required for drilling operations because the rig is an existing facility, but that the rig may need an air operating permit one year after Alaska's Title V program is approved by the EPA. Since EPA approved the Alaska program on December 5, 1996, and since the ADEC recently issued new air quality regulations, BPX is now seeking clarification on permit requirements.

Nonroad Engine Definition

According the new Alaska air quality regulations, emissions from "nonroad engines" are not included when determining the classification of a facility or modification under AS 46.14.130, 18 AAC 50.300, or 18 AAC 50.325. (See 18 AAC 50.100.) Alaska has adopted the federal definition of nonroad engines, which includes "any internal combustion engine: (i) in or on a piece of equipment that is self-propelled or serves a dual purpose by both propelling itself and performing another function." (40 CFR 89.2(1)) The drilling rig at Heald Point, Pool Arctic Alaska Rig No. 7, is self-propelled, and therefore BPX understand that all engines located in or on it are "nonroad engines."

Over the past year BPX has participated in discussions with the ADEC suggesting that classification as a nonroad engine may be limited to 12 months at one location. We do not read the nonroad engine definition in 40 CFR 89.2 to limit self-propelled engines classified under (1)(i) to 12 months at a single location. Please advise if ADEC's interpretation differs from 40 CFR 89.2.

If nonroad engines are excluded from the calculation of actual and potential emissions, the potential to emit for Pool Rig 7 is less than 20 tons per year (tpy) as long as a well testing flare is not employed. This emission rate is less than the construction and operating permit thresholds of 250 tpy and 100 tpy, respectively, and none of the other permit categories apply. Therefore, BPX believes that no air quality permits under AS 46.14.120 are required for Pool Rig 7 at Niakuk.

Nonroad Engine Applicable Requirements

In a public meeting on February 12, 1997, you stated that the Alaska State Implementation Plan (SIP) general emission limits for opacity, grain loading, and sulfur dioxide concentration do not apply to nonroad engines. We understand that this exemption is based on recent court cases interpreting Section 209 of the Clean Air Act, which generally prohibits states from applying emission standards to nonroad engines unless certain procedural steps are followed.

If SIP limits do not apply to nonroad engines, and the owner or operator has not requested voluntary limits, BPX is unaware of any applicable air quality requirements for nonroad engines. As such, nonroad engines are not regulated sources requiring identification or any other authorization to construct or operate under the ADEC's air quality laws and regulations. Please advise if you disagree with this interpretation.

If you have any questions or comments, please contact Ms. Alison Cooke at (907) 564-4838.

Sincerely,

Alison D. Cooke for

Janet D. Platt, Supervisor Compliance
Environmental and Regulatory Affairs

cc: Alfred Bohn, ADEC, Anchorage
Jim Baumgartner, ADEC, Juneau

STATE OF ALASKA

JFK

TONY KNOWLES, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION

Division of Air and Water Quality
410 Willoughby Avenue, Suite 105
Juneau, Alaska 99801-1795

Telephone: (907) 465-5100
Fax: (907) 465-5129
TTY: (907) 465-5010

March 3, 1997

Ms. Janet D. Platt
Environmental and Regulatory Affairs
BP Exploration (Alaska), Inc.
900 East Benson Boulevard
P.O. Box 196612
Anchorage, AK 99501-6612

Dear Ms. Platt:

This letter answers your February 21, 1997 request for determination on air permit requirements. In your letter, you concluded that nonroad engines are not regulated sources requiring identification or any other authorization to construct or operate under the Department of Environmental Conservation's air quality laws and regulations. At present, your conclusion is correct, including your interpretation of the 40 CFR 89.2 definition.

Please be aware, however, that a facility could need a permit for sources other than nonroad engines. Such a permit would not identify or regulate the nonroad engines. However, if an air quality analysis were required for a construction permit, then the effect of nonroad engines must be accounted for in the analysis just like any other "associated growth." *

I trust that this letter answers your questions. The Department is continuing to examine nonroad engine emissions and our regulations may change as a result of that analysis. If you have any questions or comments, please contact Mr. John Kuterbach at (907) 465-5118, or by email at jkuterba@envircon.state.ak.us.

Sincerely,

John M. Stone, Chief
Air Quality Maintenance Section

JMS/JFK/pal (b:\air\jkuterba\typing\platt.ltr)

cc: Alfred K. Bohn, ADEC/AQM, Anchorage
Jim Baumgartner, ADEC/AQM
John F. Kuterbach, ADEC/AQM
Robert W. Hughes, ADEC/AQM

* See ARCO ltr. (8/29/97) re: "associated growth"

Karen Thomas

TONY KNOWLES, GOVERNOR

cc M. Berliner
J. Turnbull
Tabos
Jossu
Pool

DEPT. OF ENVIRONMENTAL CONSERVATION

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

Phone: (907) 465-5260
Fax: (907) 465-5274
TTY: (907)465-5010

July 24, 1997

Mr. Steven Taylor, Manager
Environmental and Regulatory Affairs, Alaska
BP Exploration (Alaska), Inc.
P.O. Box 196612
Anchorage, AK 99519-6612

Dear Mr. Taylor:

I am providing a summary and clarification of the Department's policy on the regulatory treatment of North Slope drilling operations. I am also providing recommendations for BP Exploration (Alaska), Inc. (BPX) to help the Department continue policy development so that drilling operations are handled in a common sense fashion. We hope this letter addresses the outstanding issues presented by you and your staff on June 10 and July 1, and from my July 14, 1997 letter.

First, we appreciate BPX's willingness to address these difficult regulatory issues in good faith. We look forward to building upon our good working relationship as discussions continue to resolve the issues that lie ahead.

A summary of the Department's regulations for the treatment of drilling operations follows:

- The owner or operator of a drilling operation needs a construction or operating permit if the operation is a facility requiring a permit by Alaska Statutes and regulations. By regulations effective January 18, 1997, we have exempted the emissions of non-road engines from being counted against the threshold quantities for permit applicability purposes. All other emissions sources are counted against the threshold quantities for permit applicability in accordance with 18 AAC 50.210. The federal analogue for this exemption is contained in 40 CFR 52.21(b)(4) and (b)(18).

- We have mutually agreed that in some cases the drilling contractors are required to obtain necessary permits; not the lease holder or the production facility operator. Additionally, the Department agrees to use EPA guidance when determining who must

obtain the necessary permits. Although this guidance was developed for contractors at federal military installations, we believe it is an equitable way to handle this issue on the North Slope. A copy of this guidance is enclosed for your reference.

- If a project requires a permit under the State's Prevention of Significant Deterioration Program (PSD), then the permit application must address the proposed drilling operations as required by State regulation. There are two scenarios for how the emissions are addressed. First, if a proposed drilling operation is under the common control or ownership of the permit applicant, then the emissions are part of the facility and must be considered in the application as described in 18 AAC 50.310(d)(1-4). Second, if a drilling operation will occur as a result of a project, but is not under the common control or ownership of the permit applicant, then the emissions from the drilling operation are considered associated growth. The emissions must be considered in the application as described in 18 AAC 50.310(d)(2) and (4). If emissions control from non-road engines is necessary to ensure that the project does not cause or contribute to a violation of the ambient standards or increments, then the Department can only impose "in-use" emission controls, such as restrictions on fuel quality and quantity. This is a result of 1990 changes in Section 209 of the 1990 Clean Air Act, and the interpretation of the section by EPA and the courts. *See Engine Manufacturers Ass'n v. U.S. Environmental Protection Agency*, 88 F.3d, 1075, 1093-94 (D.C. Cir. 1996).

In an effort to implement these regulations in a common sense fashion, the Department has identified the following ways to use our regulatory flexibility in the short term:

- In situations where existing permits do not include authorization for historical drilling activities, the Department will use the approach set forth in our May 1, 1997 letter to you on Milne Point Pad E. This letter allowed you to continue the drilling operation pending expeditious submittal of the information required by the applicable regulations.

- In situations where a new drilling project causes a facility to need a non-PSD permit due to a modification of an existing facility, the Department will accept air pollution minimization measures for the drilling activity in lieu of an ambient impact compliance demonstration. The process for implementing this provision needs to be worked out with you.

- In situations where ambient impacts of drilling operations are assessed in PSD applications, we are willing to work closely with you to assure that all reasonable assumptions and dispersion enhancements are included in the analysis. As an example, our staff believe there are further refinements that can occur with the Milne Point application to reduce ambient impacts at low cost.

- In situations where all reasonable air pollution minimization efforts are proposed for drilling activities in a PSD application, yet a satisfactory ambient impact analysis cannot be made, the Department will consider other options, such as exclusion zones, in PSD permits.

We are also taking measures to ensure that the above policy is equitably and fairly implemented throughout the North Slope. Towards this end, we are informing other operators of these requirements.

Finally, the Department is committed to working a longer term solution to this issue with all interested parties by establishing and leading a workgroup. Under separate cover, we are transmitting an invitation to BPX for participation in the workgroup. The goal of the workgroup is to reduce air pollution from drilling activities while reducing the administrative regulatory burden, so that drilling activities can proceed in a timely, efficient, and environmentally sound fashion. We expect this process will yield tangible benefits for both the State and the operators, and we will appropriately modify our regulations based upon the agreements reached by the workgroup.

Again, I would like to thank you for BPX's cooperation on this regulatory issue. Please call if you have any questions.

Sincerely,

Michael A. Conway
Acting Director

MAC/JMS/pal ([illegible])
Enclosures

cc: Michele Brown, Commissioner, ADEC
Cam Leonard, DOL/AG, Fairbanks
Stephen Daugherty, DOL/AG, Juneau
Brian Hoefler, Hoefler Consulting Group
Bonnie Thie, EPA Region 10, Seattle
Michael J. Frank

Steve Reading

STATE OF ALASKA

TONY KNOWLES, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION

Division of Air and Water Quality
410 Willoughby Avenue, Suite 105
Juneau, Alaska 99801-1795

Telephone: (907) 465-5100
Fax: (907) 465-5129
TTY: (907) 465-5010

September 23, 1997

Ms. Bonnie Thie
U.S. EPA Region 10
1200 Sixth Avenue
Seattle, WA 98101

Dear Ms. Thie:

I would like to obtain EPA's opinion on a few new non-road engine issues. Your opinion is needed to provide guidance to Title V permit applicants, and to help us make changes to Alaska regulations to eliminate confusion over non-road engines.

The Alaska SIP contains opacity, particulate matter, and sulfur dioxide emission standards for fuel-burning equipment. Alaska's definition of fuel-burning equipment specifically exempts mobile internal combustion engines. These regulations were developed many years ago and have not been changed in recent years. Alaska traditionally applied these emission standards to internal combustion engines that now qualify as non-road engines. However, as a result of changes to the Clean Air Act, along with the subsequent rulemaking and litigation for non-road engines, it would appear that Alaska should no longer apply these emission standards to non-road engines. Is it EPA's opinion that these emission standards no longer apply to any non-road engines in Alaska?

On a similar matter, Alaska established BACT limits for internal combustion engines that are now non-road engines, through NSR permits. Do these BACT limits still apply to the non-road engine? Can Alaska continue to establish BACT limits for non-road engines with NSR programs, provided BACT is an "in-use" limit?

Please let me know if you have any questions.

Sincerely,

John M. Stone

John M. Stone, Chief
Air Quality Maintenance Section

JMS/pal (h:\air\jmsnet\epanr.wpd)

Division of Air and Water Quality

410 Willoughby Avenue, Suite 105

Juneau, Alaska 99801-1795

Telephone: (907) 465-5100

Fax: (907) 465-5129

TTY: (907) 465-5010

December 29, 1997

Ms. Janet D. Platt

BP Explorations (Alaska), Inc.

P.O. Box 196612

Anchorage, AK 99516-6612

Re: Drill Rig Permitting Applicability

Dear Ms. Platt:

I am responding to your December 16, 1997, letter to Bob Hughes requesting an opinion as to whether operating permit applications are required to be submitted for five existing transportable drill rigs. The Department responded to a similar request from the Alaska Chapter of International Association of Drilling Contractors on December 15, 1997. In the letter, I discussed the effect of Alaska=s air quality laws on oil drilling rigs. A copy of that letter is enclosed.

I began my analysis by looking at the classifications for operating permit facilities listed in 18 AAC 50.325(b)-(d). This section of our regulations list the types of facilities that need to submit operating permit applications.

The first type of facility that needs an operating permit is a facility that emits, or has the potential to emit (PTE), 100 tons per year or more of a regulated air contaminant. As you know, the emissions from non-road engines are not included in this calculation. You will need to sum the PTE of all other sources at the generic facility to determine if the 100-ton threshold quantity is exceeded. In the generic permits, it looks like source nos. 20-26 and 28 are included in this calculation. Based upon your letter, it appears you have determined that the PTE of the generic facility is less than the threshold.

The second type of facility that needs an operating permit is a facility that emits or has the potential to emit 10 tons per year or more of a hazardous air contaminant, or 25 tons per year or more of a combination of hazardous air contaminants. This calculation is performed in a manner similar to the 100-ton per year calculation. You will have to perform this calculation, because I do not possess hazardous air contaminant information for the generic facility.

The third type of facility is a facility that is subject to a federal emission standard, such as the NSPS and NESHAPS. As stated in your letter, this classification does not appear to apply to the generic facility.

The fourth category is facilities that are subject to State emission limits in the Port of Anchorage. This provision does not apply to you since the generic facilities are not located in the Port of Anchorage.

See 1. State Ltr. (9/23/97)

The final category is facilities that are described in 18 AAC 50.300(b)-(e). Subsection (b) contains a paragraph that could apply to your generic facility. A facility containing fuel-burning equipment with a capacity greater than 100 million Btu/hr is classified under (b)(2). By virtue of this classification, the generic facility would need to submit an operating permit application. To perform this calculation, you would need to sum the rated capacity of all fuel-burning equipment at the facility. Please note that non-road engines are included in this calculation. I preliminarily conclude that the generic facility falls within this classification based upon the rating of the flare.

The remaining subsections of 18 AAC 50.300(b)-(e) operate using PTE. Since non-road engines are excluded from this calculation, it is unlikely the generic facility is classified by one of these subsections.

In summary, I conclude that operating permit applications should be submitted for the generic drill rig facilities. My determination is based on a belief that the generic facilities are described by 18 AAC 50.300(b)(2) and classified as operating permit facilities under 18 AAC 50.325(c). Since you have more detailed information on the sources at the generic facility, I recommend that you check my analysis before drawing the same conclusion.

If you have any questions on the above guidance, please contact me at (907) 465-5103.

Sincerely,

John M. Stone, Chief

Air Quality Maintenance Section

JMS/pal (h:\home\jstone\bpxnopmt.wpd)

Enclosure: December 15, 1997, letter to the IADC

cc: Robert W. Hughes, ADEC/AQM, Juneau

Bill MacClarence, ADEC/AQM, Anchorage

Fairbanks ADEC/AQM File

Mike Krupa, IADC

Web Page

ADEC Homepage | AQM Homepage | Org Chart | What's New | AQM Guidance

THE ALASKA CHAPTER
OF THE
INTERNATIONAL
ASSOCIATION OF
DRILLING CONTRACTORS

Mailing Address: P.O. Box 240845
Anchorage, Alaska 99524-0845

RESOLUTION 98-1

WHEREAS: The State of Alaska has primacy over the federal Prevention of Significant Deterioration (PSD) and Title V permitting programs, and implements these programs pursuant to the requirements of the federal Clean Air Act.

WHEREAS: These programs, as established by the United States Congress and the federal Environmental Protection Agency (EPA), are designed and intended for permitting major stationary sources such as cement plants, municipal incinerators, petroleum refineries, chemical plants, crude oil and refined product tank farms, etc.

WHEREAS: The 1990 Amendments to the federal Clean Air Act recognize a category of emission sources identified as "nonroad engines" (e.g., lawnmowers, snow blowers, snow mobiles, construction cranes, bulldozers, etc.), which are mobile emission sources that should not be permitted as stationary sources.

WHEREAS: EPA recognizes that the emission control technologies applicable to stationary sources are different than those applicable to mobile sources and, therefore, allows mobile sources to be classified as "insignificant activities," which are outside of the stationary source permitting framework.

WHEREAS: Although the federal definition of nonroad engines (i.e., mobile, internal combustion engines) is adopted by reference in State regulation, the State Department of Environmental Conservation (ADEC) continues to permit nonroad engines (i.e., mobile sources) as stationary sources.

WHEREAS: The nonroad engine/mobile source issue has been a point of contention between the regulated community and the ADEC for at least the past three years and has yet to be resolved.

WHEREAS: On the North Slope of Alaska worst case emissions from drilling operations comprise less than 10 percent of total emissions based on a comparison of figures from stationary source air quality permits

WHEREAS: North Slope drilling contractors have significantly reduced the drilling times for conventional wells thus reducing the amount of air emissions per well.

WHEREAS: North Slope drilling contractors have fueled their equipment with natural gas where appropriate, further reducing certain air emissions.

WHEREAS: North Slope drilling contractors have equipped their rigs with the capability to run on electricity generated at a central facility when available, further reducing drilling rig emissions.

WHEREAS: Air monitoring data reveal no ambient air quality problem anywhere on the North Slope of Alaska.

NOW, THEREFORE, BE IT RESOLVED: The Alaska Chapter of the International Association of Drilling Contractors (IADC) supports the passage of Senate Bill 299 which removes nonroad engines from stationary source permitting in accordance with the federal Clean Air Act.

BE IT FURTHER RESOLVED: The IADC supports the workgroup effort initiated by the Alaska Oil and Gas Association to the extent that, after collecting operational data sufficient to determine whether emissions from nonroad engines significantly effect ambient air quality, the resulting operational restrictions developed are economically feasible, based on sound science, meet EPA minimum requirements and are applicable throughout Alaska.

Resolution 98-1 was adopted by a unanimous vote of the Board of Directors of the Alaska Chapter of the International Association of Drilling Contractors on the16th day of March,1998.

Mike Krupa
Director, Alaska Chapter

House Finance Committee

DATE: April 7, 98

PLACE: Cap. 519

SUBJECT OF MEETING:
HB 272 HB 227
SB 299

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?		WHAT SUBJECT/ WHICH BILL?
Sam Trivette	Corrections	240 Main St.			465-3343	(Y)	N	272
Al Ewing John Stone	ADEC	410 WILLOUGHBY			465-5100	(Y)	N	299
Brian Petty, Russ Douglas Kyle Parker	IHDC					Y	N	
Kirsten Shelton	AK Conservation Voice	419 6th St.				(Y)	N	299
(ADD TO LINE) Pam LaBolle	State Chamber	217 Second St #201			586-2323	(Y)	N	299
KYLE PARKER						Y	N	
RUSS DOUGLAS						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	

TELECONFERENCE
HOUSE FINANCE

APRIL 7

SB 299: WELL TEST FLARES & NONROAD ENGINES

OFFNETS

BRIAN PETTY	**D.C.**	**SR VP IADC DRILLING CONTRACTORS**	**202-293-0670**

HB 227: CAPITAL IMPROVEMENT PROJECT AUTHORITY

OFFNETS

HENRY SPRINGER	**ANCHORAGE**	**AGC**	**561-5354**

04/07/98 LEGISLATIVE TELECONFERENCE NETWORK SYSTEM LTN1150
14:08:17 PARTICIPANT LIST (TESTIFIERS ONLY) BY:JNU
TCN:80629 SCHEDULED FOR:04/07/98 13:30 TO 16:30 FOR:ALL
PUBLIC HEARING HOUSE FINANCE

LOCATION:ANCHORAGE

SB 299		PATTI	SAUNDERS - OPPOSED		TESTIFY
SB 299		PAMELA	MILLER - OPPOSED		TESTIFY
SB 299	AM. LUNG ASSOC.	JAY	HERMANSON - OPPOSED		TESTIFY
SB 299	CLEAN AIR COALITION	CHERYL	RICHARDSON		TESTIFY
SB 299	HAD TO LEAVE	JENNY	NORRIS		TESTIFY
SB 299		MIKE	COUMBE		TESTIFY

LOCATION:FAIRBANKS

HB 272	MS	SHARON	L HEUREUX	FNA	TESTIFY
SB 299	MS	SARA	CALLAGHAN	NAEC	TESTIFY

274-3639

04-06-98 A09:55 IN

THE ALASKA CHAPTER
OF THE
INTERNATIONAL
ASSOCIATION OF
DRILLING CONTRACTORS

Mailing Address: P.O. Box 240845
Anchorage, Alaska 99524-0845

HAND DELIVERED

April 6, 1998

The Honorable Gail Phillips
Speaker of the House
Alaska State Legislature
State Capitol
Room 208
Juneau, Alaska 99801

Re: SB 299, "An Act relating to the treatment of well test flares, nonroad engines, and aggregated fuel burning equipment associated with nonroad engines under the state's air quality control program; defining 'stationary source' for purposes of the state's air quality program."

Dear Representative Phillips:

In the course of events leading up to the implementation of the state's current air quality control program (AS 46.14 and 18 AAC 50), many issues were brought forward and debated amongst the state and federal regulators and the members of the regulated community. Some of those issues were addressed in statute and regulation -- others were not.

One of the major issues not addressed in the state's current air quality program was the treatment of stationary vs. mobile sources of emissions in air quality control permitting.

The federal Clean Air Act recognizes a distinction between stationary and mobile emission sources and includes sections addressing each separately. In other words, the federal program controls (regulates) emissions from stationary sources (e.g., an oil and gas refinery) through an air quality control permitting process. This process requires the operator of the facility to submit an application and demonstrate their compliance with air quality standards which are established by the federal Clean Air Act. If the operator can not demonstrate that air quality standards will be achieved, permit restrictions are imposed which will force compliance. The permit restrictions imposed may require the addition of control technologies for the elimination or reduction of certain types of emissions. These control technologies may include exhaust scrubbers, emission collection systems, etc. Typically, these emission control

technologies are capital intensive, require special engineering considerations due to their large size and weight, and are specifically designed for use with stationary equipment.

With regard to mobile sources of emissions (e.g., transportation engines, marine vessels, locomotives, lawn mowers, snow machines, snowblowers, construction cranes, bulldozers, etc.), the federal program recognizes that the same emission control technologies used for stationary sources are not suitable for mobile application. The primary reasons for the unsuitability of those emission control technologies is the cost, as well as the large size and weight of those technologies.

Recognizing these limitations, EPA developed alternative methods of regulating emissions from mobile sources. EPA determined the most appropriate way to control emissions from mobile sources was to develop and institute emission standards applicable to the manufacture of mobile equipment. In other words, all mobile equipment must be manufactured to meet the EPA established emissions standards. Appropriate emission control technologies, therefore, are built into the mobile equipment as opposed to requiring modification of the mobile equipment at the time of initiating operations.

The ADEC regulators do not distinguish between mobile and stationary sources of emissions when determining whether an air quality control permit is required. See, e.g., October 20, 1997 letter from John Stone, ADEC, to Mike Krupa, IADC ("Mobility is not a factor that is used to determine if equipment is a source [subject to regulation]."). Although Mr. Stone indicates that mobility is not a factor, the concept of mobility has been introduced into the state regulatory framework and does effect ADEC's ability to regulate emissions from these sources. See 18 AAC 50.100 ("The actual and potential emissions of nonroad engines are not included when determining the classification of a facility or modification . . . ."); see also 18 AAC 50.990 (40) ("'fuel-burning equipment' means a combustion device capable of emission, including flares, but excluding **mobile** internal combustion engines . . . .") (emphasis added); 18 AAC 50.990 (56) ("'nonroad engine' has the meaning given in 40 C.F.R. 89.2, as amended through December 19, 1996, adopted by reference."). To qualify as a nonroad engine under the federal definition the internal combustion engine must be "self propelled", "intended to be propelled", "portable or transportable, meaning designed to be and capable of being carried or moved from one location to another." Although the state regulations clearly require ADEC to take into consideration the mobility of emission sources when determining whether to regulate those emissions, ADEC, in practice, continues to treat mobile and stationary sources alike.

As a result of ADEC's failure to recognize the distinctions between stationary and mobile emission sources, ADEC bundles these two different emission sources together and attempts to regulate emissions from mobile sources through a permitting process specifically intended for application to stationary sources (e.g., construction permits, operating permits, temporary operations permits, etc.). This failure results in confusion in the application of state law when stationary and mobile sources of emissions are regulated under the stationary permitting program.

For example, at one location on the North Slope, an operator holds an air quality control permit ("operating permit") for an oil and gas production facility (a stationary source of emissions). In addition to operating restrictions on stationary equipment permanently located at the permitted production facility, the air quality control permit for that production facility includes operating restrictions on a number of the mobile sources (i.e., nonroad engines) which occasionally operate in the vicinity of the permitted facility. ADEC has included these mobile sources in the operating permit as "stationary sources", and has imposed operating restrictions on those mobile sources despite the fact that ADEC maintains mobile sources are not required to be permitted. See March 3, 1997 letter from John Stone, ADEC, to Janet Platt, BPXA ("In your letter, you concluded that nonroad engines are not regulated sources requiring identification or any other authorization to construct or operate under the Department of Environmental Conservation's air quality laws and regulations. At present, your conclusion is correct, including your interpretation of the 40 C.F.R 89.2 definition.").

This confusion is exacerbated by the fact that the holder of the operating permit for the production facility does not own or operate the mobile sources of emissions which have been included as "stationary sources" on their permit. In light of the significant civil penalties which may be imposed for violations of air quality control permit restrictions, the fact that equipment which is not owned or operated by the permit holder is included on the permit creates a question of ultimate liability for permit violations.

A further point of confusion using this specific example is that the permit restrictions imposed on the mobile sources of emissions by the operating permit for the production facility are enforced even when the mobile sources are operating outside of the location specifically permitted. In other words, the operating permit was issued for a specific location, yet under ADEC's implementation of the air quality control program, the permit restrictions extend to the mobile sources pursuant to the specific provisions of the permit and are applicable to that mobile equipment even when it is outside of the permitted area. In effect, ADEC is permitting mobile emission sources in disregard of its own regulations and the federal Clean Air Act guidelines.

SB 299, which was introduced by Senator Loren Leman, is intended to codify in state statute the federally recognized distinction between mobile and stationary emission sources. Passage of SB 299 will prevent mobile sources from being permitted as stationary sources. SB 299 also will simplify the stationary source permitting process by disallowing consideration of nonroad engine emissions in a stationary source permit determination. In summary, SB 299 will require that ADEC treat mobile sources (i.e., nonroad engines) in accordance with EPA federal operating permit program regulations.

The Alaska Chapter of the International Association of Drilling Contractors encourages your favorable consideration of SB 299. Please contact me, Russ Douglass (563.5530 x-22) or Kyle Parker (566.1220) should you have any questions regarding SB 299.

Thank you for your time and effort regarding this matter, and your continued support of the Alaska oil and gas drilling industry.

Sincerely,

Chuck Sullivan
Director, Alaska Chapter
907.563.5530 x-22

Enclosures

THE ALASKA CHAPTER
OF THE
INTERNATIONAL
ASSOCIATION OF
DRILLING CONTRACTORS

Mailing Address: P.O. Box 240845
Anchorage, Alaska 99524-0845

RESOLUTION 98-1

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WHEREAS: The nonroad engine/mobile source issue has been a point of contention between the regulated community and the ADEC for at least the past three years and has yet to be resolved.

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Resolution 98-1 was adopted by a unanimous vote of the Board of Directors of the Alaska Chapter of the International Association of Drilling Contractors on the16th day of March,1998.

Mike Krupa
Director, Alaska Chapter