SB

299

SENATE COMMITTEE REPORT
First Committee of Referral

DATE: 2/12/98

FURTHER:

Date of 5-Day Notice: 3/12/98
(in accordance with Uniform Rule 23)

DATE TURNED IN TO OFFICE: 3/23/98

Resources Committee considered SENATE BILL NO. 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."

and recommends:

[ ] be **replaced** with _____ CS _____(_____)

[ ] adopt **previous** _____ CS _____(_____)

[ ] attached amendment(s)

[ ] adopt Letter of Intent by _____ Committee

[ ] further referral to the _____ Committee

Senate Bill:
[ ] same title
[ ] new title

House Bill:
[ ] same title
[ ] technical title
[ ] new: SCR"_____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
			✓		
	✓	✓			
	✓				
CHAIR: Rick Halford	✓	CHAIR:			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal
	3/19		83.0

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal

[ ] **APPROPRIATION -- no fiscal note**

***include fiscal notes accompanying Governor's bill**

SENATOR LOREN LEMAN

Northwest Anchorage

716 W 4th Ave, Suite 520, Anchorage, AK 99501 (907) 258-8189
Web Site: http://www.akrepublicans.org/Leman.htm

Session: State Capitol, Juneau, AK 99801 (907) 465-2095
Email: Senator_Loren_Leman@legis.state.ak.us

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.

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. SB -299

Revision Date 3/19/98 (corrected)
Dept. Affected Environmental Conservation
Title Well Test Flares and nonroad engines
BRU Air and Water
Component Air Quality
Sponsor Senator Leman
Requester Senate Resources Committee
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	59.9	0.0	0.0	0.0	0.0	0.0
Travel	5.5	0.0	0.0	0.0	0.0	0.0
Contractual	17.6	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	83.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ( )	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	83.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (Specify Type)	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	83.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY98) cost: 0.0

POSITIONS

Full-time	0	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

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

See attached detail

Prepared by John Stone
Phone 465-5103
Division Air and Water
Date 3/14/98
Approved by Commissioner
Date
Agency Department of Environmental Conservation

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

For further distribution information, call the Governor's Legislative Office

Rev 9/97) 98fnform xls/OMB

Analysis: Fiscal Note for SB 299

Although the bill will reduce staff workload by eliminating the need for some permits, the department is estimating that this reduction will be ten permits per year. Given the current permitting backlog of approximately 200 permits, the workload reduction would be negligible over the next five years, and so would not result in any reduction in staffing levels or expenditures. Another consideration would be the impact of changing the air quality regulations in 18 AAC 50 to be consistent with the provisions of the bill. Regulation changes of this magnitude, involving the Department of Law and a public hearing process, are estimated to cost between $75,000 and $100,000, and the increased workload would add to the current permitting backlog unless another position were added. The bill is also expected to increase third-party adjudication of permit disputes, as well as federal intervention, though the long-term impact of this is currently unknown.

Regulation change cost breakdown

Category	Description	Amount	Total
Personal Services	One Environmental Specialist III (Range 18) for regulation development	1.0 FTE	59.9
Travel	2 trips to Anchorage, Fairbanks, Ketchikan for public hearings	4 @ $1000, 2 @ $750	5.5
Contractual	Department of Law consultations and regulation review	50 hours @ $93.50	4.7
	Advertising - public notices required for regulation changes	5 papers/ twice/ @ $300	3.0
	Contractual costs associated with position	(phone, photocopying, lease costs, postage, etc.)	5.9
	Public hearings required for new regulations		
	Room rental for public hearings	6 @ $250	1.5
	Hearing officer for public hearings	6 @ $250	1.5
	Publication of new regulations		1.0
		Total	**83.0**

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. SB -299

Revision Date (Note if correction) 3/18/98
Dept. Affected Environmental Conservation
Title Well Test Flares and nonroad engines
BRU Air and Water
Component Air Quality
Sponsor Senator Leman
Requester Senate Resources Committee
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	65.9	0.0	0.0	0.0	0.0	0.0
Travel	5.5	0.0	0.0	0.0	0.0	0.0
Contractual	11.6	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	**83.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CHANGE IN REVENUES ( )	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	83.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (Specify Type)	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	**83.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY98) cost: 0.0

POSITIONS

Full-time	1	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

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

See attached detail

Prepared by John Stone
Phone 465-5103
Division Air and Water
Date 3/14/98
Approved by Commissioner
Date 3/18/98
Agency Department of Environmental Conservation

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

For further distribution information, call the Governor's Legislative Office

(Rev 9/97) 98inform xls/OMB

Analysis: Fiscal Note for SB 299

Although the bill will reduce staff workload by eliminating the need for some permits, the department is estimating that this reduction will be ten permits per year. Given the current permitting backlog of approximately 200 permits, the workload reduction would be negligible over the next five years, and so would not result in any reduction in staffing levels or expenditures. Another consideration would be the impact of changing the air quality regulations in 18 AAC 50 to be consistent with the provisions of the bill. Regulation changes of this magnitude, involving the Department of Law and a public hearing process, are estimated to cost between $75,000 and $100,000, and the increased workload would add to the current permitting backlog unless another position were added. The bill is also expected to increase third-party adjudication of permit disputes, as well as federal intervention, though the long-term impact of this is currently unknown.

Regulation change cost breakdown

PCN 18-#028 w/indirect @ 9.86%	1.0 FTE	65.9
Travel	statewide	5.5
DOL review	50 hours @ 93.50	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
		83.0

```
POSITION INFORMATION HAS BEEN UPDATED AND FUNDING HAS BEEN UPDATED.
 03/18/98        Position Information Inquiry/Update     Prior        15:02:21
                                                       Yr Actual     Budgeted
 Position: 18-18#028        Project: 0____     Salary:          0     44,772.00
 Comp: 18-30-00-00-00-60    Region: _          Benefits:        0     15,149.31
 Scenario:   2    FY: 99    COLA %: 0.000      Total:           0     59,921.31
-------------------------------------------------------
Actuals not available   (Status: UNKNOWN  ) FLSA:   |    Retirement Code:   A
-------   ---------------------------------------------
          | Step: B for 12.0 months & Step: C for _0.0 months (total: 12.00 )
 00/00/00 | Merit Date; use merit defaults?  N        (  0.0 @   &  0.0 @   )
 0        | Class/Sched Prefix: 2                  Schedule: 2A (actual:    )
          | Bargaining Unit:    GG                 Range:    18 (actual:    )
          | Location Code:     AWA    Place: JUNEAU
          | Job Class Code:    P8656  Title: ENV ENG ASSOCIATE_____________
          | Seasonal Indic.:    F      Type:       -
-----------
Optional Override Salary Rates:
 Monthly Rate: 0.00____ for _0.0 months & rate of 0.00____ for _0.0 months
 Hourly Rate:  0.00____ for _0.0 months        Frozen at this rate? (Y/N): N

 Press ENTER to update record; enter # or use PF key to go to another screen:
 1=Premium pay info    2=Funding info     4=Code Translations  6=Calculations
 7=MISC NEW POS DATA   8=Detail Report   12=Exit w/o update    Selection: 0_
```

MAR 2 0 1998

THE ALASKA CHAPTER
OF THE
INTERNATIONAL
ASSOCIATION OF
DRILLING CONTRACTORS

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

March 20, 1998

The Honorable Rick Halford
Alaska State Legislature
Chairman, Senate Resources Committee
State Capitol
Room 121
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 Senator Halford:

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 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 control 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) as insignificant activities 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,

Russell C. Douglass, for

Mike Krupa
Director, Alaska Chapter
907.563.5530 x-22

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

```
POSITION INFORMATION HAS BEEN UPDATED AND FUNDING HAS BEEN UPDATED.
 03/18/98        Position Information Inquiry/Update     Prior        15:02:21
                                                       Yr Actual     Budgeted
 Position: 18-18#028        Project: 0____      Salary:          0     44,772.00
 Comp: 18-30-00-00-00-60    Region:  _          Benefits:        0     15,149.31
 Scenario:   2    FY: 99    COLA %: 0.000       Total:           0     59,921.31
-------------------------------------------------------
Actuals not available   (Status: UNKNOWN  ) FLSA:    |    Retirement Code:   A
-------  ----------------------------------------------
         | Step: B for 12.0 months & Step: C for _0.0 months (total: 12.00 )
 00/00/00| Merit Date; use merit defaults?  N        (  0.0 @   &  0.0 @   )
 0       | Class/Sched Prefix: 2                  Schedule: 2A (actual:    )
         | Bargaining Unit:    GG                 Range:    18 (actual:    )
         | Location Code:      AWA    Place: JUNEAU
         | Job Class Code:     P8656  Title: ENV ENG ASSOCIATE_____________
         | Seasonal Indic.:    F      Type:       -
-----------
Optional Override Salary Rates:
 Monthly Rate: 0.00____ for _0.0 months & rate of 0.00____ for _0.0 months
 Hourly Rate:  0.00____ for _0.0 months        Frozen at this rate? (Y/N): N

 Press ENTER to update record; enter # or use PF key to go to another screen:
 1=Premium pay info    2=Funding info     4=Code Translations  6=Calculations
 7=MISC NEW POS DATA   8=Detail Report   12=Exit w/o update    Selection: 0_
```

Alaska Community Action on Toxics
135 Christensen Drive
Anchorage, Alaska 99501
(907) 222-7714 (phone); (907) 222-7715
e-mail: acat@akcf.org

Testimony on SB 299
March 20, 1998

Alaska Community Action on Toxics is a program of the Alaska Conservation Foundation. Alaska Community Action on Toxics seeks to protect human health and the environment from the toxic effects of contaminants. We work to ensure responsible cleanup of contaminated sites. We strive to stop the production, proliferation, and release of toxic chemicals.

We are opposed to SB 299 because it exempts significant sources of air pollution from permit requirements and regulatory oversight. We believe that this bill would lead to adverse impacts on human health and the environment. This bill violates requirements under the Clean Air Act and jeopardizes our state's implementation of the Act as delegated by federal law. This bill so blatantly ignores provisions of the Clean Air Act that federal takeover of management of Alaska's air resources would be inevitable if this bill were to pass.

Some of the facilities proposed by this bill for exemption include some of the largest sources of air pollution, including: well test flares used to dispose of oil and gas wastes, diesel engines used to power drill rigs, asphalt plants, dirt burners, power plants, and mines. Hazardous air pollutants from these facilities are known to cause acute and chronic respiratory illnesses: soot, carbon monoxide, nitrogen oxides, sulfur dioxide, and volatile organic chemicals. Some of the facilities burning hazardous wastes produce cancer-causing air pollutants such as dioxins and furans—these substances cause endocrine disruption, reproductive disorders, and other serious health effects at extremely low concentrations.

We believe that this bill will have adverse economic consequences including the imposition of federal highway fund sanctions. The detrimental health effects resulting from this bill will cause increases in health care costs for Alaskans, particularly those who already suffer from respiratory illnesses such as asthma. Health care officials in the village of Nuiqsut have been concerned over the last several years that air pollution from production facilities at Prudhoe Bay is causing dramatic increases in respiratory illnesses such as asthma, particularly during the air inversions of the winter months. Deregulation of oil facilities and other sources of air pollution in the Cook Inlet area would affect the public health of the greatest concentration of the population in the state. This bill does not consider science or the public health.

We respectfully request that you prevent the institution of this bill.

Pamela Miller, Program Director

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.

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.

The following letters show the changing position and advice to permitees by the Alaska Department of Environmental Conservation.

Letter #1 (2/21/97):

From BP Exploration to John Stone, ADEC Division of Air and Water Quality, "seeking clarification on permit requirements". BP states that 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."

Letter #2 (3/3/97):

From John Stone, ADEC, to BP Exploration stating that BP's analysis of nonroad engines is correct. Cautioning that if an air quality analysis were required for a construction permit, then the effect of nonroad engines must be accounted for like any other "associated growth".

Letter #3 (7/24/97):

From Mike Conway, ADEC to BP Exploration stating that

- nonroad engine emissions are exempt from being counted against threshold quantities for permit applicability purposes;
- the guidance ADEC is relying on was developed for contractors at federal military installations.
- ADEC is prepared as of July 1997 to establish and lead a work group for a "solution".

Letter #4 (9/23/97):

From John Stone, ADEC, to U.S. EPA Region 10, asking for assistance to help ADEC to "make changes to Alaska regulations to eliminate confusion over nonroad engines". He states Alaska's definition of fuel-burning equipment specifically exempts mobile internal combustion engines. He asks EPA's opinion whether Alaska standards no longer apply to nonroad engines in Alaska.

Letter #5 (12/29/97):

From John Stone, ADEC to BP Exploration stating that now, in his opinion, nonroad engines will have to be factored into a facility (stationary) permit.

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 ltr. (3/3/97) confirming BPXA positions 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 (h:\air\jkuterba\typing\plan.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. Bellinger
J. Turnbull
Jacobs
Josie 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 (h:\air\jmsmc\bpdrill.wpd)
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

Stone/Keating

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\jstone\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, lett' 'o 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 J. 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

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 exemotions 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.