

HB

160

HFIN

FILE

STATE OF ALASKA

FRANK H. MURKOWSKI, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION
OFFICE OF THE COMMISSIONER

410 Willoughby Ave., Ste 303
Juneau, AK 99801-1795
PHONE: (907) 465-5065
FAX: (907) 465-5070
<http://www.state.ak.us/dec/>

March 18, 2003

The Honorable Bill Williams
Alaska House of Representatives
State Capitol, Room 515
Juneau, AK 99801

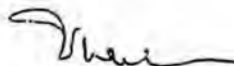
Dear Representative Williams:

The Department of Environmental Conservation requests a hearing on HB 160 - an Act Relating To The Emission Control Permit Program - Air Quality Program. The State of Alaska has responsibility for management of air quality and air permits are necessary to maintain Alaska's excellent air quality. However "one size fits all" permits do not protect the environment nor do they meet the goal of having a predictable, reliable and rational program.

This legislation does not change our current protective air quality standards. This legislation does ensure that when sources of air pollution are in close proximity, the cumulative effects will be investigated. It establishes standardized permit conditions based on best management practices. It differentiates between major and minor sources of air pollution and focuses our resources accordingly. Finally, in order to keep this program fiscally self-sustaining, changes will be made to the fee structure as well as to appropriate fund sources.

Tom Chapple, Acting Director for the Division of Air and Water Quality will represent the department on this issue. For additional information, please contact Mr. Chapple at 269-7634 or Mary Siroky, the department's legislative liaison at 465-5355. Thank you for your consideration.

Sincerely,



Ernesta Ballard
Commissioner

cc: Mike Tibbles, Legislative Director, Office of the Governor
Tom Chapple, Acting Director, Division of Air & Water Quality, DEC
Mary Siroky, Legislative Liaison, DEC

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

March 27, 2003

SUBJECT: Emission Control Permit Program (CSHB 160(FIN); version "H")

TO: Representative John Harris
Representative Bill Williams
Co-chairs of the House Finance Committee

FROM: Terri Lauterbach
Legislative Counsel *TLauterbach*

Per previous instructions, this bill has not been reviewed by the Division of Legal and Research Services for potential legal or substantive problems.

TML:mdr
03-039.mdr

Enclosure

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: HB 160
(H) Publish Date: 3/5/03

Revision Date/Time (Note if correction): _____ Dept. Affected: DEC
Title Air Permits Bill BRU Air & Water Quality
Component Air Quality
Sponsor Rules Committee
Requester Governor Component No. 2061

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

| OPERATING EXPENDITURES | FY 2004 | FY 2005 | FY 2006 | FY 2007 | FY 2008 | FY 2009 |
|------------------------|--------------|--------------|--------------|--------------|--------------|--------------|
| Personal Services | 507.3 | 507.3 | 507.3 | 507.3 | 507.3 | 507.3 |
| Travel | 33.7 | 33.7 | 33.7 | 33.7 | 33.7 | 33.7 |
| Contractual | 311.0 | 311.0 | 311.0 | 311.0 | 311.0 | 311.0 |
| Supplies | 4.0 | 4.0 | 4.0 | 4.0 | 4.0 | 4.0 |
| Equipment | 21.7 | 21.7 | 21.7 | 21.7 | 21.7 | 21.7 |
| Land & Structures | | | | | | |
| Grants & Claims | | | | | | |
| Miscellaneous | | | | | | |
| TOTAL OPERATING | 877.7 | 877.7 | 877.7 | 877.7 | 877.7 | 877.7 |

| | | | | | | |
|----------------------|--|--|--|--|--|--|
| CAPITAL EXPENDITURES | | | | | | |
|----------------------|--|--|--|--|--|--|

| | | | | | | |
|------------------------|--|--|--|--|--|--|
| CHANGE IN REVENUES () | | | | | | |
|------------------------|--|--|--|--|--|--|

FUND SOURCE (Thousands of Dollars)

| | | | | | | |
|--------------------------------|--------------|--------------|--------------|--------------|--------------|--------------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | | | | | | |
| 1005 GF/Program Receipts | | | | | | |
| 1037 GF/Mental Health | | | | | | |
| 1093 Clean Air Protection Fund | 877.7 | 877.7 | 877.7 | 877.7 | 877.7 | 877.7 |
| TOTAL | 877.7 | 877.7 | 877.7 | 877.7 | 877.7 | 877.7 |

Estimate of any current year (FY2003) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

| | | | | | | |
|-----------|---|---|---|---|---|---|
| Full-time | 7 | 7 | 7 | 7 | 7 | 7 |
| Part-time | | | | | | |
| Temporary | | | | | | |

ANALYSIS: (Attach a separate page if necessary)
The Governor's operating budget contains support of the above reform to the air permit program. This bill achieves protection of air quality while reforming the permit review process to make permitting predictable, reliable and rational. Specifically, the bill will allow:
- DEC's program to reflect national precedents, court case decisions, and permit best practices.
- Differentiate major source from minor source permits.
- Regulate minor sources in a simpler way, with reliance on standardized permit conditions that incorporate best management practices.
- Exempt sources from permitting to the extent allowed under federal law.
- Achieve efficiency through adopting federal rules by reference.
- Change the permit fee structure to make costs predictable and reliable for permittees.

Prepared by: John Kuterbach Phone 465-5103
Division Air & Water Quality Date/Time 3/3/03 1:53 PM
Approved by: Kurt Fredriksson - Deputy Commissioner Date 3/3/2003
Agency Department of Environmental Conservation

Personal Services New Position Detail

Department of Environmental Conservation

Scenario: All Fiscal Notes - DEC FY2004 (3085)

Component: Air Quality (2061)

BRU Name: Air and Water Quality (206)

| PCN | Job Class Title | Time Status | Retire Code | Barg Unit | Location | Salary Sched | Range & Steps | Budgeted Months | Split / Annual Count | Annual Salary | COLA | Premium Pay | Annual Benefits | Total Costs |
|---------|------------------------|-------------|-------------|-----------|----------|--------------|---------------|-----------------|----------------------|---------------|------|-------------|-----------------|-------------|
| 18-#006 | Analyst/Programmer III | FT | A | GP | Juneau | 2A | 18B | 12.0 | | 47,316 | 0 | 0 | 16,153 | 63,469 |

Justification:

The analyst programmer will provide the support to develop and maintain the database system for the interactive, electronic internet based on-line permit application system for the air permits section. In addition this position will develop new electronic tools to accomplish air permitting more efficiently and faster.

Funding Detail:

| | | | |
|-----------------------|---------------------------|---------|--------|
| 1093 | Clean Air Protection Fund | 100.00% | 63,469 |
| Total Funding: | | 100.00% | 63,469 |

| | | | | | | | | | | | | | | |
|---------|-----------------------|----|---|----|-----------|----|-----|------|--|--------|---|---|--------|--------|
| 18-#007 | Engineering Associate | FT | A | GP | Anchorage | 2A | 20B | 12.0 | | 54,240 | 0 | 0 | 17,394 | 71,634 |
|---------|-----------------------|----|---|----|-----------|----|-----|------|--|--------|---|---|--------|--------|

Justification:

The environmental engineer associate position will perform field work to provide technical assistance as well as increase on-site inspections which provide facility operators verification of their compliance. This position will also identify where environmental impacts differ significantly from the original project plans. This will improve permitting by focusing permit conditions on operations which demonstrate problems rather than over-regulating all operations to prevent problems at a few sites.

Funding Detail:

| | | | |
|-----------------------|---------------------------|---------|--------|
| 1093 | Clean Air Protection Fund | 100.00% | 71,634 |
| Total Funding: | | 100.00% | 71,634 |

| | | | | | | | | | | | | | | |
|---------|-----------------------|----|---|----|--------|----|-----|------|--|--------|---|---|--------|--------|
| 18-#008 | Environmental Spec IV | FT | A | SS | Juneau | 2A | 20B | 12.0 | | 55,164 | 0 | 0 | 17,583 | 72,747 |
|---------|-----------------------|----|---|----|--------|----|-----|------|--|--------|---|---|--------|--------|

Justification:

The environmental specialist will provide additional program development resources to accomplish permit streamlining regulation changes. This position will analyze necessary changes, draft regulation changes and manage the public process of adopting the changes. This position will also develop internal procedures and guidance to improve service delivery.

Funding Detail:

| | | | |
|-----------------------|---------------------------|---------|--------|
| 1093 | Clean Air Protection Fund | 100.00% | 72,747 |
| Total Funding: | | 100.00% | 72,747 |

Note: If a position is split, an asterisk (*) will appear in the Split/Count column. If the split position is also counted in the component, two asterisks (**) will appear in this column.

Personal Services New Position Detail

Department of Environmental Conservation

Scenario: All Fiscal Notes - DEC FY2004 (3085)

Component: Air Quality (2061)

BRU Name: Air and Water Quality (206)

| PCN | Job Class Title | Time Status | Retire Code | Barg Unit | Location | Salary Sched | Range & Steps | Budgeted Months | Split / Annual Count | Annual Salary | COLA | Premium Pay | Annual Benefits | Total Costs |
|---------|-----------------------|-------------|-------------|-----------|-----------|--------------|---------------|-----------------|----------------------|---------------|------|-------------|-----------------|-------------|
| 18-#009 | Environmental Spec IV | FT | A | GP | Anchorage | 2A | 20B | 12.0 | | 54,240 | 0 | 0 | 17,394 | 71,634 |

Justification:

The environmental specialist will lead the development of a minor source permit program which will allow DEC to address pollution from minor sources in the most cost effective and responsible manner. Currently many minor sources must go through much of the same permitting process as major sources simply because there is no mechanism to address them. A minor source permit program will direct DEC's efforts to those minor sources that truly have the potential to harm public health and welfare. This position will also work with the analyst programmer on the development of new permitting tools and on the management of contracting tools.

Funding Detail:

| | | | |
|-----------------------|---------------------------|---------|--------|
| 1093 | Clean Air Protection Fund | 100.00% | 71,634 |
| Total Funding: | | 100.00% | 71,634 |

| | | | | | | | | | | | | | | |
|---------|-----------------------|----|---|----|-----------|----|-----|------|--|--------|---|---|--------|--------|
| 18-#010 | Engineering Associate | FT | A | GP | Fairbanks | 2B | 20B | 12.0 | | 56,412 | 0 | 0 | 17,783 | 74,195 |
|---------|-----------------------|----|---|----|-----------|----|-----|------|--|--------|---|---|--------|--------|

Justification:

The environmental engineer associate will perform field work to provide technical assistance as well as increase on-site inspections which provide facility operators verification of their compliance. This position will also identify where environmental impacts differ significantly from the original project plans. This will improve permitting by focusing permit conditions on operations which demonstrate problems rather than over-regulating all operations to prevent problems at a few sites.

Funding Detail:

| | | | |
|-----------------------|---------------------------|---------|--------|
| 1093 | Clean Air Protection Fund | 100.00% | 74,195 |
| Total Funding: | | 100.00% | 74,195 |

| | | | | | | | | | | | | | | |
|---------|-----------------------|----|---|----|-----------|----|-----|------|--|--------|---|---|--------|--------|
| 18-#011 | Environmental Spec IV | FT | A | GP | Anchorage | 2A | 20B | 12.0 | | 54,240 | 0 | 0 | 17,394 | 71,634 |
|---------|-----------------------|----|---|----|-----------|----|-----|------|--|--------|---|---|--------|--------|

Justification:

The environmental specialist will conduct the internal audits for the air permits quality management system. This will reduce variability and provide useful metrics for judging the progress towards meeting performance measures and provide guidance for continual improvement of the program.

Funding Detail:

| | | | |
|-----------------------|---------------------------|---------|--------|
| 1093 | Clean Air Protection Fund | 100.00% | 71,634 |
| Total Funding: | | 100.00% | 71,634 |

Note: If a position is split, an asterisk (*) will appear in the Split/Count column. If the split position is also counted in the component, two asterisks (**) will appear in this column.

Personal Services New Position Detail

Department of Environmental Conservation

Scenario: All Fiscal Notes - DEC FY2004 (3085)
 Component: Air Quality (2061)
 BRU Name: Air and Water Quality (206)

| PCN | Job Class Title | Time Status | Retire Code | Barg Unit | Location | Salary Sched | Range & Steps | Budgeted Months | Split / Annual Count | Annual Salary | COLA | Premium Pay | Annual Benefits | Total Costs |
|----------|------------------------|-------------|-------------|-----------|-----------|--------------|---------------|-----------------|----------------------|---------------|------|-------------|-----------------|-------------|
| 18-#0 '2 | Environ Conserv Mgr II | FT | A | SS | Anchorage | 2A | 22B | 12.0 | | 62,988 | 0 | 0 | 18,985 | 81,973 |

Justification:

The environmental conservation manager will lead the design and implementation of the permit system to reduce variability in permits. This responsibility will cover both the operation and the construction permits.

Total New Positions: 7

Funding Detail:

| | | | |
|-----------------------|---------------------------|----------------|---------------|
| 1093 | Clean Air Protection Fund | 100.00% | 81,973 |
| Total Funding: | | 100.00% | 81,973 |

| Fund Description | Fund Percent | Fund Amount |
|--------------------------------|----------------|----------------|
| 1093 Clean Air Protection Fund | 100.00% | 507,286 |
| Total Funding: | 100.00% | 507,286 |

Note: If a position is split, an asterisk (*) will appear in the Split/Count column. If the split position is also counted in the component, two asterisks (**) will appear in this column.

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 160
 () Publish Date: _____

Revision Date/Time (Note if correction): March 26, 11:30a Dept. Affected: Environmental Conservation
 Title Emission Control Permit Program BRU Air & Water Quality
 Component Air Quality
 Sponsor Rules Committee
 Requester House Finance Component No. 2061

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

| OPERATING EXPENDITURES | FY 2004 | FY 2005 | FY 2006 | FY 2007 | FY 2008 | FY 2009 |
|------------------------|------------|------------|------------|------------|------------|------------|
| Personal Services | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| Travel | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| Contractual | 0.0 | 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 | | | | | | |
| Grants & Claims | | | | | | |
| Miscellaneous | | | | | | |
| TOTAL OPERATING | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

| | | | | | | |
|-----------------------------|--|--|--|--|--|--|
| CAPITAL EXPENDITURES | | | | | | |
|-----------------------------|--|--|--|--|--|--|

| | | | | | | |
|-------------------------------|--|--|--|--|--|--|
| CHANGE IN REVENUES () | | | | | | |
|-------------------------------|--|--|--|--|--|--|

FUND SOURCE (Thousands of Dollars)

| | | | | | | |
|--------------------------------|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | | | | | | |
| 1005 GF/Program Receipts | | | | | | |
| 1037 GF/Mental Health | | | | | | |
| 1093 Clean Air Protection Fund | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| TOTAL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

Estimate of any current year (FY2003) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

This revised fiscal note is zero as the cost of reinvigorating the air permit program is in the Governor's FY 2004 operating budget request.

This legislation removes roadblocks preventing predictable, reliable and rational permitting, while the budget increment provides staff to execute these legislative reforms and issue permits in a timely manner.

The result is a permitting program that is predicable, protective of air quality and flexible enough to take advantage of fast changing business opportunities. This achieves the governor's goal of enhancing resource development while maintaining environmental protection.

Prepared by: John Kuterbach Phone 465-5103
 Division Air & Water Quality Date/Time 3/26/03 11:42 AM
 Approved by: Ernesta Ballard, Commissioner Date 3/26/2003
 Agency Department of Environmental Conservation

FRANK H. MURKOWSKI
GOVERNOR
GOVERNOR@GOV.STATE.AK.US



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

HB 160
P.O. Box 110001
JUNEAU, ALASKA 99811-0001
(907) 465-3500
FAX (907) 465-3532
WWW.GOV.STATE.AK.US

March 5, 2003

The Honorable Pete Kott
Speaker of the House
Alaska State Legislature
State Capitol, Room 208
Juneau, AK 99801-1182

Dear Speaker Kott:

Under Authority of article III, section 18, of the Alaska Constitution, I am transmitting a bill related to the state's air quality control program.

The State of Alaska has responsibility for management of air quality and recognizes that air permits are necessary to maintain Alaska's excellent air quality. The bill achieves protection of air quality while reforming the permit review process to make permitting predictable, reliable and rational. Specifically, the bill will:

- Allow DEC's program to reflect national precedents, court decisions, and incorporate best practices from other states into our permits.
- Differentiate major source from minor source permits.
- Regulate minor sources based on standardized permit conditions that incorporate best management practices.
- Exempt sources based on standardized permit conditions that incorporate best management practices.
- Exempt sources from permitting to the extent allowed under federal law.
- Achieve efficiency through adopting federal rules by reference.

The Honorable Pete Kott
March 5, 2003
Page 2

In the end, the reform that this bill initiates will result in more efficient review of permits and more "hard-hat time" for field inspectors working to make sure standards are protective and permits are enforced.

I urge your prompt and favorable consideration of this important legislation.

Sincerely,

A handwritten signature in cursive script, reading "Frank H. Murkowski".

Frank H. Murkowski
Governor

| Section | What it does | Why it does it |
|---------|--|---|
| 1 | Adds air permitting to AS 37.05 | Authorizes change to flat fees |
| 2 | Adds air permitting to AS 37.10 | Authorizes change to flat fees |
| 3 | Replaces state terminology with federal terminology and updates cross reference to minor source program | |
| 4 | Replaces state terminology with federal terminology | |
| 5 | Replaces state terminology with federal terminology | |
| 6 | Replaces state terminology with federal terminology | |
| 7 | Replaces state terminology with federal terminology | |
| 8 | Replaces state terminology with federal terminology | |
| 9 | Replaces state terminology with federal terminology | |
| 10 | Replaces state terminology with federal terminology | |
| 11 | Replaces state terminology with federal terminology | |
| 12 | Adds the requirement to get a minor permit and adds ability to exempt sources from operating permits to the extent allowed by federal law. | Needed to establish the minor permitting program, and existing law restricts department ability to exempt source if EPA has not explicitly exempted them. |
| 13 | Eliminates the requirement to obtain a construction permit or operating permit for minor sources. | Allows a clearer distinction between major and minor source permitting by reserving construction and operating permits for major sources. |
| 14 | Uses the categories removed from major source permitting to establish the category of minor permits, and continues the enforceability of existing permits while the minor permits are pending. | Allows a clearer distinction between major and minor source permitting by establishing a separate category of permit for minor sources. |
| 15 | Adds phrase to exempt the minor permit program from the itemized list of required regulations. | Allows the department to adopt only those regulations necessary for the minor permit program |
| 16 | Replaces state terminology with federal terminology | |

| Section | What it does | Why it does it |
|---------|--|---|
| 17 | Eliminates the operating permit deadline for a facility which needs an operating permit but no construction permit. | Deadline is unnecessary and creates compliance issues without environmental benefit. |
| 18 | Replaces state terminology with federal terminology | |
| 19 | Adds cross reference for minor source permit program | |
| 20 | Add deadline for minor source permit actions | |
| 21 | Replaces state terminology with federal terminology | |
| 22 | Replaces state terminology with federal terminology | |
| 23 | Add phrase which acknowledges that a public comment period may not be required for minor permits. | |
| 24 | Replaces state terminology with federal terminology | |
| 25 | Establishes the authority and rules for general minor permits. | Current general permit authority is based on Title V requirements and contains restrictions that may not be appropriate for minor sources. |
| 26 | Limits the applicability of temporary permits section to operating permits. | Existing section is required for Title V permits. New minor permit program may establish temporary permits which deviate from these title v restrictions. |
| 27 | Replaces state terminology with federal terminology | |
| 28 | Substitutes permit fees under AS 37.010 for the current hourly fees, while maintaining the small business fee aspect required by Title V | Authorizes change to flat fees |
| 29 | Replaces state terminology with federal terminology | |
| 30 | Maintains certain permit administration work as free to the individual small business | Required by Title V |

| Section | What it does | Why it does it |
|---------|--|---|
| 1 | Adds air permitting to AS 37.05 | Authorizes change to flat fees |
| 2 | Adds air permitting to AS 37.10 | Authorizes change to flat fees |
| 3 | Replaces state terminology with federal terminology and updates cross reference to minor source program | |
| 4 | Replaces state terminology with federal terminology | |
| 5 | Replaces state terminology with federal terminology | |
| 6 | Replaces state terminology with federal terminology | |
| 7 | Replaces state terminology with federal terminology | |
| 8 | Replaces state terminology with federal terminology | |
| 9 | Replaces state terminology with federal terminology | |
| 10 | Replaces state terminology with federal terminology | |
| 11 | Replaces state terminology with federal terminology | |
| 12 | Adds the requirement to get a minor permit and adds ability to exempt sources from operating permits to the extent allowed by federal law. | Needed to establish the minor permitting program, and existing law restricts department ability to exempt source if EPA has not explicitly exempted them. |
| 13 | Eliminates the requirement to obtain a construction permit or operating permit for minor sources. | Allows a clearer distinction between major and minor source permitting by reserving construction and operating permits for major sources. |
| 14 | Uses the categories removed from major source permitting to establish the category of minor permits, and continues the enforceability of existing permits while the minor permits are pending. | Allows a clearer distinction between major and minor source permitting by establishing a separate category of permit for minor sources. |
| 15 | Adds phrase to exempt the minor permit program from the itemized list of required regulations. | Allows the department to adopt only those regulations necessary for the minor permit program |
| 16 | Replaces state terminology with federal terminology | |

| Section | What it does | Why it does it |
|---------|--|---|
| 17 | Eliminates the operating permit deadline for a facility which needs an operating permit but no construction permit. | Deadline is unnecessary and creates compliance issues without environmental benefit. |
| 18 | Replaces state terminology with federal terminology | |
| 19 | Adds cross reference for minor source permit program | |
| 20 | Add deadline for minor source permit actions | |
| 21 | Replaces state terminology with federal terminology | |
| 22 | Replaces state terminology with federal terminology | |
| 23 | Add phrase which acknowledges that a public comment period may not be required for minor permits. | |
| 24 | Replaces state terminology with federal terminology | |
| 25 | Establishes the authority and rules for general minor permits. | Current general permit authority is based on Title V requirements and contains restrictions that may not be appropriate for minor sources. |
| 26 | Limits the applicability of temporary permits section to operating permits. | Existing section is required for Title V permits. New minor permit program may establish temporary permits which deviate from these title v restrictions. |
| 27 | Replaces state terminology with federal terminology | |
| 28 | Substitutes permit fees under AS 37.010 for the current hourly fees, while maintaining the small business fee aspect required by Title V | Authorizes change to flat fees |
| 29 | Replaces state terminology with federal terminology | |
| 30 | Maintains certain permit administration work as free to the individual small business | Required by Title V |

| Section | What it does | Why it does it |
|---------|---|--|
| 31 | Makes fee review every four years instead of every three, and changes assessable emissions to be based on potential to emit rather than emissions authorized by permit. | Review schedule change makes this regulation consistent with AS 37.010. Change to assessable emissions is needed for clarity. |
| 32 | Clarifies that sources which have minor or construction permits also must pay emission fees | Existing statute requires emission fees from facilities subject to the operating permits program. The bill proposes to change who needs an operating permit; therefore, this section ensures that regulated source must still pay emission fees. |
| 33 | Replaces state terminology with federal terminology | |
| 34 | Establishes receipt account for non-Title V fees | Needed to collect non-title V revenue outside of dedicated CAPF |
| 35 | Makes the new minor permits subject to the department's termination, modification, and reopening authority. | |
| 36 | Replaces state terminology with federal terminology | |
| 37 | Replaces state terminology with federal terminology | |
| 38 | Replaces state terminology with federal terminology | |
| 39 | Replaces state terminology with federal terminology | |
| 40 | Replaces state terminology with federal terminology | |
| 41 | Replaces state terminology with federal terminology | |
| 42 | Replaces state terminology with federal terminology | |
| 43 | Replaces state terminology with federal terminology | |
| 44 | Replaces state terminology with federal terminology | |
| 45 | Replaces state terminology with federal terminology | |
| 46 | Replaces state terminology with federal terminology | |
| 47 | Replaces state terminology with federal terminology | |

| Section | What it does | Why it does it |
|---------|--|--|
| 48 | Changes definitions | Makes terminology consistent with Federal law |
| 49 | Changes definitions | Makes terminology consistent with Federal law |
| 50 | Changes definitions | Makes terminology consistent with Federal law |
| 51 | Changes definitions | Makes terminology consistent with Federal law |
| 52 | Changes definitions | Makes terminology consistent with Federal law |
| 53 | Changes definitions | Makes terminology consistent with Federal law |
| 54 | Changes definitions | Makes terminology consistent with Federal law |
| 55 | Changes definitions | Makes terminology consistent with Federal law |
| 56 | Changes definitions | Makes terminology consistent with Federal law |
| 57 | Changes definitions | Makes terminology consistent with Federal law |
| 58 | Changes definitions | Makes terminology consistent with Federal law |
| 59 | Adds new federal definitions | Makes terminology consistent with Federal law |
| 60 | Repeals Definitions no longer used | |
| 61 | Session law to maintain current permit compliance until new minor permits are issued | Allows time for the department to establish new minor source permit regulations and issue permits while maintaining environmental protection afforded by existing permits. |
| 62 | Session law to allow regulations to be adopted but not be effective prior to effective date of statutory sections. | |
| 63 | Session law to apply definition changes to currently adopted regulations until those regulations can be changed. | |
| 64 | Makes statutory changes, except for those relating to fees, effective immediately. | |

| Section | What it does | Why it does it |
|---------|---|---|
| 65 | Makes statutory changes relating to fees effective January 1, 2005 | Allows time for the department to determine budgetary requirements, appropriate flat fees, and to adopt necessary regulations to implement. |
| 66 | Establishes effective date for new receipts account consistent with the start of fiscal year 2006 | Allows time to develop needed budget documents to implement the separation of construction permit fees from the Title V fees. |

42 160

Air Permit Reform Bill - 2003

Notes by DEC 3/3/03

What Does the Bill Accomplish?

The bill achieves protection of air quality while reforming the permit review process to make permitting predictable, reliable and rational. Specifically, the bill will:

- Allow DEC's program to reflect national precedents, court case decisions, and permit best practices in review.
- Differentiate major source from minor source permits.
- Regulate minor sources in a simpler way, with reliance on standardized permit conditions that incorporate best management practices.
- Exempt sources from permitting to the extent allowed under federal law.
- Achieve efficiency through adopting federal rules by reference.
- Change the permit fee structure to make costs predictable and reliable for permittees.

In the end, the reform that this bill initiates will result in more efficient review of permits and more "hard-hat time" for field inspectors working to make sure standards are protective and permits are enforced.

Who was Involved in Shaping the Bill?

DEC and the Department of Law prepared the bill. It was drafted to fulfill the recommendations of the Air Permit Work Group, a stakeholder group convened by DEC in the fall 2002.

Member entities and representatives on the Work Group were:

- Producers Council of Alaska, Charlotte MacCay (works for Teck Cominco)
- Alaska Oil and Gas Association, Jordan Jacobsen (works for Alyeska Pipeline Co.)
- Alaska Rural Electric Cooperative, Carl Harmon (works for Chugach Electric)
- Cook Inlet Regional Citizens Advisory Council, Mike Munger
- Prince William Sound Regional Citizens Advisory Council, Tom Kuckertz
- U.S. Department of Defense, Kate Siftar (works for the U.S. Army)
- DEC, Tom Chapple and John Kuterbach

Pacific Seafood Processors Assoc., Stephanie Madsen – participated in some of the meetings, but did not in the concluding meetings or drafting the final report.

Facilitator: Brian Rogers of Infoinsights facilitated the Work Group meetings



information
insights

Suite 100
212 Front Street
Mail: P.O. Box 73490
Fairbanks, Alaska
99707-3490
(907) 450-2450
Fax (907) 450-2470
info@infoinsights.com

December 31, 2002

Commissioner Ernesta Ballard
Alaska Department of Environmental Conservation
410 Willoughby Ave., Suite 303
Juneau, AK 99801

Via Fax and Email: (907) 465-5070
ernesta_ballard@envircon.state.ak.us

Ref: Air Permits Work Group Final Report

Dear Commissioner Ballard:

Attached please find the final report of the Air Permits Work Group, established in August by the department to help guide ADEC in crafting the future for the Air Permits Program at ADEC.

The Air Permits Work Group consisted of representatives from the oil and gas, mining, electrical power and fish processing industries, the military, and citizens organizations. It worked by consensus, adopting this report without objections.

I appreciated the opportunity to facilitate this Work Group as it grappled with challenging technical and public policy issues. Please do not hesitate to contact me if you have any questions regarding the report.

Sincerely,

Brian Rogers
Facilitator

cc: Members of the Air Permits Work Group:
Carl Harmon, Alaska Rural Electric Cooperative Association
Jordan Jacobsen, Alaska Oil and Gas Association
Tom Kuckertz, Prince William Sound Regional Citizens'
Advisory Council
Charlotte MacCay, Council of Alaska Producers
Mike Munger, Cook Inlet Regional Citizens' Advisory Council
Kate Siftar, U.S. Department of Defense
Tom Chapple, Alaska Department of Environmental Conservation
John Kuterbach, Alaska Department of Environmental
Conservation

- Alaska Department of Environmental Conservation
Air Permits Work Group Report

The Work Group

The Alaska Department of Environmental Conservation (ADEC) created this Work Group to develop proposed short-term and long-term recommendations for changes to ADEC's air permitting program. Members were selected by ADEC to represent affected industries and the public. The Work Group met four times, with numerous sub-group meetings by teleconference and electronic mail. ADEC selected Information Insights to facilitate Work Group meetings.

Members of the Work Group include¹:

Carl Harmon, Alaska Rural Electric Cooperative Association
Jordan Jacobsen, Alaska Oil and Gas Association
Tom Kuckertz, Prince William Sound Regional Citizens' Advisory Council
Charlotte MacCay, Council of Alaska Producers
Mike Munger, Cook Inlet Regional Citizens' Advisory Council
Kate Siftar, U.S. Department of Defense
Tom Chapple, Alaska Department of Environmental Conservation
John Kuterbach, Alaska Department of Environmental Conservation
Facilitators: Brian Rogers and Judy Erickson, Information Insights

Executive Summary

The Work Group recommends that the State of Alaska retain the responsibility to implement the Title V air operating permit program and Clean Air Act Title I major new source review programs, continue to implement the SIP and continue regulating minor source review, subject to further review as explained later in this report, provided that ADEC implements measures outlined in these recommendations to improve the efficiency and responsiveness of the air permitting Program:

- **Construction Permitting** -- The Work Group concludes that new source review in Alaska is needlessly complex and that the process takes far too much time to issue permits. The Work Group endorses legislative and regulatory measures to more closely mimic the revised federal 40 CFR Part 51 (PSD/NSR – Prevention of Significant Deterioration / New Source Review) program and to incorporate the major new source review program reforms adopted by the EPA Administrator on November 22, 2002. Minor new source review must be expedited and simplified. Construction permitting in Alaska must account for the unique geographic and environmental conditions (see attachment A) that affect business and facility operations in Alaska.

¹ Stephanie Madsen, representing the fish processing industry, was unable to attend the final meeting and did not participate in approving the report. T.C. Wilson represented ARECA for the first two meetings.

- **Title V Permitting** -- The Work Group finds that the ADEC's difficulty in timely issuance of Title V permits is at least partially a consequence of the fact that the Alaska Title V program is broader in scope and different in content from the federal template codified in 40 CFR Part 70, the model on which most states have relied in developing their Title V programs. The Work Group recommends legislative and regulatory measures that allow the department to adopt a federal core Title V program. The rulemaking should include a requirement that monitoring, record-keeping and reporting consider Alaska's unique characteristics.
- **Program Funding** -- The Work Group finds that the current system of funding air permitting in Alaska through a combination of emission fees and hourly permit administration fees lacks the stability and predictability to enable ADEC to respond effectively to changes in the number and complexity of air emissions sources in the state. In addition the Work Group believes the hourly permit administration fee structure contributes to the Department's inability to promptly process permit applications. The Department should collaborate with stakeholders to develop legislation to address the shortcomings in the current fee system. The Work Group recommends that the revised funding mechanism for the construction permit program should include a series of flat fees for defined services, and consider negotiated project-specific fees for complex projects, in place of hourly permit administration fees. The Work Group looked at fee structures of other states (see Attachment B). The Work Group recommends that the department provide a justification for any proposed fee increase. The future level of emission fees should be based on the department's demonstrated budgetary needs, subject to continuing legislative appropriation and review by the next Work Group of whether there is adequate funding, accounting for Alaska's unique conditions.
- **Mission Statement and Management Plan** -- The Work Group recommends ADEC's Division of Air and Water Quality adopt an air quality mission statement, and develop and implement a management plan to implement the mission statement that includes:
 1. A business plan that provides position by position budgeting and responsibilities;
 2. Performance measures for staff;
 3. Standard Operating Procedures (SOPs) for the staff that ensure timely, predictable permits and permit terms;
 4. Utilization of contractors to support workload peaks and to acquire cost effective and timely expertise for consulting and preparing draft permits;
 5. Management oversight to ensure consistent implementation of rules and policies.
- **Implementation** -- The Work Group recommends that the department extend the term of service of this Work Group, or appoint a similar advisory body representing the interests of diverse stakeholder groups, to work with the department to implement the recommendations provided above, including a

package of legislative and regulatory measures to secure authority for prompt implementation of these reforms. Specific issues requiring additional work include:

1. Air permit fees. The department prepared a preliminary analysis of costs and fee levels required to support the Work Group's recommendations, but there was insufficient time for the Work Group or the department to review and refine the analysis.
2. Technology standards. The Work Group did not complete deliberations on the issue of delegation of responsibility for federal technology standards (NSPS, NESHAPs and MACT standards), and the effect of delegation on the state regulatory structure.
3. Minor new source review. The Work Group did not provide a specific recommendation for changes to the minor new source review program in light of the recommended changes in the PSD and Title V permit programs.
4. Increments. The Work Group did not address how the state should deal with the substantial differences in size of baseline areas for air quality in Alaska versus other states, or how to change Alaska's baseline areas to make them comparable to the rest of the country.

Construction Permitting

Background:

The Work Group concludes that new source review in Alaska is needlessly complex and that process takes far too much time to issue permits. The state's Prevention of Significant Deterioration and New Source Review (PSD / NSR) construction permitting program came into effect in 1983, shortly after the federal PSD rules were adopted nationally. The state's PSD program has remained relatively unchanged since 1983, but EPA's PSD guidance and focus has changed over time. The Alaska new source review rules deviate from federal requirements in ways that in some cases make permitting more costly and resource intensive. EPA recently adopted major revisions to the PSD program. The new EPA rules have clarified requirements and will subject fewer projects to PSD permitting. ADEC will still be required to prevent significant deterioration of air quality in the state.

Recommendations:

The Work Group endorses legislative and regulatory measures to more closely mimic the revised federal 40 CFR Part 51 (PSD/NSR) program and to incorporate the major new source review program reforms adopted by the EPA Administrator on November 22, 2002. Minor new source review must be expedited and simplified. Construction permitting in Alaska must account for the unique geographic and environmental conditions that affect business and facility operations in Alaska.

The state should maintain a state-approved, rather than delegated, PSD/NSR construction permit program.²

The governor should introduce legislation to more closely mimic the revised federal 40 CFR Part 51 (PSD/NSR) program during the 2003 session for passage by the 23rd Alaska Legislature. The Department of Law should conduct a review of the air quality statutes to identify any impediments to a speedy adoption of the revised federal PSD/NSR program, as modified by the new rules. ADEC, working with stakeholders, should be prepared to draft the necessary statutory changes to implement the recommendation as well as any changes deemed necessary to address changes in the scope of regulation of minor sources.

ADEC should streamline the PSD program and adequately staff it so construction permits can be issued within six months of application. ADEC should be authorized and encouraged to use contractors to manage peak workload demand.

The state should continue to use fast track mechanisms (such as owner requested limits and pre-approved limits) for sources that can maintain operating levels below permitting thresholds.

Title V Permitting

Background:

The Work Group finds that ADEC's difficulty in timely issuance of Title V permits is at least partially a consequence of the fact that the Alaska Title V program is broader in scope and different in content from the federal template codified in 40 CFR Part 70, the model on which most states have relied in developing their Title V programs.

Recommendations:

The Work Group recommends legislative and regulatory measures that allow the department to adopt a federal core Title V program. The Work Group recommends that any funding proposals should be tied to the implementation of a Part 70-type program.

All members of the Work Group support the state retaining primacy for the Title V operating permitting program, provided changes can be made to streamline the program and adequately fund it. Making Alaska's Title V operating permit program more like a federal Part 70 program will provide consistent terminology, and more streamlined and consistent permit processes. The Work Group recommends the rulemaking include a requirement that monitoring, record keeping and reporting consider Alaska's unique characteristics.

ADEC should initiate a benchmarking and process analysis for Title V monitoring, record-keeping and reporting, similar to the effort undertaken for the PSD program, for the Title V Operating Permit Program to recommend streamlining opportunities. ADEC should improve permit quality through the implementation of pre-application meetings and standardized formats.

² ADEC has never issued a nonattainment new source review (NSR) construction permit

Program Funding

Background:

The Work Group finds that the current system for funding air permitting in Alaska through a combination of emission fees and hourly permit administration fees lacks the stability and predictability to enable ADEC to respond effectively to changes in the number and complexity of air emissions sources in the state. In addition the Work Group believes that hourly permit administration fee structure contributes to the department's inability to promptly process permit applications.

ADEC has started to build a cost-model for the air permit program based on the Work Group's anticipated recommendations regarding the Title V operating and PSD construction permitting programs. In that model, ADEC plans to evaluate the level of funding needed to meet federal requirements over the next three fiscal years. Included in the analysis will be the costs for ADEC to make the necessary statutory and regulatory changes to its air permit program, including any needed Work Group processes, and to enhance its service delivery. ADEC will evaluate how a new funding regime that utilizes a fixed application fee and emissions fees (or a set of fixed fees plus emissions fees) will impact permittees.

Recommendations:

The Work Group recommends that the department provide a justification for any proposed fee increase. The department should collaborate with stakeholders to develop legislation to address the shortcomings in the current fee system. The Work Group recommends that the revised funding mechanism for the construction permit program should include a series of flat fees for defined services, and consider negotiated project-specific fees for complex projects, in place of hourly permit administration fees. The Work Group looked at fee structures of other states. The future level of emission fees should be based on the department's demonstrated budgetary needs, subject to continuing legislative appropriation and review by the next Work Group of whether there is adequate funding, accounting for Alaska's unique conditions.

The proposed fee schedule should provide that all permittees pay fees. To the extent it is cost-effective, fees should be fairly allocated such that the costs of each program are borne by the emitting parties, including those parties using fast track mechanisms (such as owner requested limits and pre-approved limits).

ADEC should be authorized and encouraged to use contractors to manage peak workload demand. ADEC should consider adopting air permit regulations that allow permit applicants to voluntarily pay the costs of contractors to assist DEC in processing permit applications.

FY03 Shortfall Background:

ADEC has entered into an agreement with the Environmental Protection Agency (EPA) to issue all Title V permits by November 2003. The division will experience a cash flow problem this spring if the division fills the four new oil and gas positions the Legislature authorized in the FY 03 budget. Additionally, emissions fees, which are intended to cover the division's overhead costs, will not be adequate to support emission fee-supported work. The division estimates a shortfall of approximately \$200,000.

FY03 Shortfall Recommendations:

Contingent upon ADEC's continued active participation in the air permit reinvention process and continuance of the Work Group process, the Work Group supports a supplemental general fund appropriation of \$200,000 for FY03 to address the program's revenue shortfall.³ Absent any workable solution to the funding shortfall, division staff would need to be reassigned to permit writing. This would result in reductions in inspections, compliance assistance work, complainant response, and work on the state implementation plan (SIP) and regulation changes, resulting in an inability to staff the air permit process reinvention. In addition to the supplemental appropriation, the Work Group recommends several interim measures to help address the short-term problem:

1. ADEC should encourage federal facilities to negotiate with the EPA to use SEPs (supplemental environmental projects) to fund third-party contractors to assist with permit writing and to provide training for ADEC permit writers. ADEC would oversee the contractors' work.
2. ADEC should allow regulated facilities to elect to pre-pay their emissions fees based on projected rather than actual emissions, alleviating this fiscal year's funding shortfall. Any excess fees could be credited to the facilities and applied against future fees or for use in settlements.
3. ADEC should streamline the permitting process by preparing standard permits for companies with multiple like facilities. The peculiarities of individual facilities would be worked out separately. Combined with this recommendation is the proposal to encourage permit applicants to cut and paste from existing approved permits when preparing draft permits.

Mission Statement and Management Plan

Background:

The Work Group finds the mission of the air quality programs is unclear to both the Division of Air and Water Quality and the regulated community.

Recommendations:

The Work Group recommends the division adopt the following air quality mission statement:

“ADEC air quality programs protect the health and welfare of Alaska's residents and environment in a cost-effective and efficient manner that meets federal and state requirements and ensures economic sustainability.”

The Work Group recommends the division develop and implement a management plan to implement the mission statement that includes:

- A business plan that provides position-by-position budgeting and responsibilities;
- Performance measures for staff;

³ AOGA abstains from this recommendation because it has a policy of not commenting on legislative budget decisions.

- SOPs for the staff that ensure timely, predictable permits and permit terms;
- Utilization of contractors to support workload swings and to acquire cost effective and timely expertise for consulting and preparing draft permits;
- Management oversight to ensure consistent implementation of rules and policies.

Implementation

Background:

The Work Group finds that while it was able to make substantial progress on air permit issues, there was insufficient time to analyze all information presented to the Work Group. The Work Group further finds that the reinvention of the air permits process will require continued involvement of stakeholders.

Recommendations:

The Work Group recommends that ADEC extend the term of service of this Work Group, or appoint a similar advisory body representing the interests of diverse stakeholder groups, to work with the department to implement the recommendations provided above, including a package of legislative measures to secure authority for prompt implementation of these reforms. The Commissioner should consider expanding membership to include representation from stakeholders affected only by the minor new source review program.

Specific issues requiring additional work include:

1. Air permit fees. The department prepared a preliminary analysis of costs and fee levels required to support the Work Group's recommendations, but there was insufficient time for the Work Group or the department to review and refine the analysis.
2. Technology standards. The Work Group did not complete deliberations on the issue of delegation of responsibility for federal technology standards, and the effect of delegation on the state regulatory structure.
3. Minor new source review. The Work Group did not fully discuss any potential new permitting or other mechanisms to regulate minor sources after the Title V operating permit program and the PSD construction permit program are changed to more closely mirror the comparable federal programs.
4. Increments. The Work Group did not address how the state should deal with the substantial differences in size of baseline areas for air quality in Alaska versus other states, or how to change Alaska's baseline areas to make them comparable to the rest of the country.

Attachment A: Alaska's Unique Characteristics

The State of Alaska is extremely large and sparsely populated (in EPA parlance most facilities are remote and rural). The state is relatively undeveloped with the exception of a few urban areas. There is little existing infrastructure in the way of roads, railroads, ports, rural sanitation and interconnected electric power.

In contrast, the contiguous 48 states have well developed, cost effective transportation systems and power grids, both of which were largely funded by the federal government. Alaska is struggling to provide cost effective transportation and power to its residents and businesses. Many federal funding programs for developing power infrastructure generally no longer exist, except for the Denali Commission. Applicable federal air regulations are more stringent today, in comparison to those in existence when power infrastructure was developed in the lower 48. This makes power generation an extra costly obstacle, with a higher reliance upon funding from the state, local communities and the private sector.

The added costs of technology are extremely burdensome for remote, high-cost operating locations. This is particularly true in rural Alaska where there are limited economic resources and limited economic opportunities. Many of these rural communities rank among the poorest in the nation.

Federal air quality regulations have been developed almost completely with the contiguous 48 states in mind and with little, if any, consideration of the unique conditions of Alaska. These federal regulations have been developed for equipment and resources being used in temperate, populated and well-developed western-based economies of the states. As such, the regulations and guidelines are not necessarily appropriate for Alaska's remote rural geography. The current federal air quality objective of providing nation-wide consistency runs headlong into these unique Alaska characteristics. It is important that Alaska be able to assert some discretion in the application of federal air regulations where these regulations do not contemplate Alaska's unique characteristics.

If the State chooses to operate delegated federal air programs, the unique characteristics in Alaska need to be, by program design, a major consideration in all permit development. This is most important in the PSD program. Alaska regulations need to document the existence of these unique conditions and require their consideration wherever appropriate.

Unique Alaska characteristics and their implications for air permitting

- **Permafrost**
 - Conventional construction methods may cause deterioration of permafrost
 - Construction that includes permafrost protection may be more costly
 - Construction that includes permafrost protection may take more time
 - Excavation may not be feasible in some locations, or may be seasonally limited
 - Some structures may not be suitable for certain geography (e.g., permafrost, tundra)

- Extensive fencing tends to fall down
 - Tall monitoring towers may be unstable
- Implications for air permitting
 - Requirements for fencing facility boundaries impractical
 - Requirements for tall monitoring towers may be impractical
- **Remote locations, lack of road system, railroad, and infrastructure**
 - Limited means of transporting supplies and products
 - Costs of transportation and equipment
 - Maintenance costs
 - Limited shipping season for remote sites to bring materials on site.
 - Implications for air permitting
 - Requirements to exclude public access through barriers are less necessary.
 - Requirements to monitor or patrol boundaries are less necessary and frequently infeasible or unsafe.
 - Current - increment baseline dates are inconsistent with the Lower 48 because of the large air classification areas in Alaska.
 - Lack of power grids puts the onus on individual facilities to produce their own power – as a private power producer, the developer often faces additional costs because the developer is responsible for all the burden of generating power and pollution control, rather than sharing that burden with other users. Private producers often face more stringent pollution control requirements than public or nonprofit power producers
 - Lack of power grid puts onus on small communities to develop power generation. These communities are rural and generally low-income villages with little resources to expend on complex and expensive pollution control technology.
 - In small communities, there is a lack of accessible expertise to operate and maintain power generation pollution control equipment
 - Lack of available power for offsite monitoring sites – portable generators frequently fail, invalidating data recovery requirements or contaminating data with emissions from diesel-fired equipment.
 - Lack of available power and access for offsite monitoring sites may make data collection prohibitively expensive for some projects.
 - There is a need for backup power and emergency generation, which further exacerbates costs
 - Alternative power generation through batteries may not be feasible due to short battery life in cold weather.

- Road dust potentially becomes a limiting factor for transportation and infrastructure maintenance.
- Roads over loess soils dry out; blowing dust is difficult to control in cold climates.
- The time schedule for construction is shortened due to shipping time limitations. Minor delays in permitting can delay construction during the available seasons for a year or more because of missed shipping deadlines.
- Deadlines to bring a site into compliance may be too short for practicality.
- **Expanse of the state (1/5 the size of the continental United States)**
 - Limited meteorological data available
 - Wide variety of climactic conditions from temperate coastal to high arctic interior
 - Implications for environmental permitting
 - Extensive data collection is frequently required, where in other states the base data already exists
 - Misconceptions about climatic conditions are common
 - Permits may be based on a lack of ambient meteorological data.
- **Presence of migratory mammals and dangerous animals**
 - Fencing requirements obstruct migratory routes.
 - Operations are frequently curtailed during migratory periods.
 - There is limited available data on migration routes.
 - Migration routes are not always predictable.
 - Migration affects the permittee's ability to collect necessary data
 - Dangerous animals are frequently present in the field
- **Extreme cold and darkness**
 - Significant portions of the year have temperatures well below zero
 - The extreme cold and dark result in a limited construction season due to safety and shipping limitations
 - In extreme cold – sub zero temperatures
 - Concrete cannot be poured
 - Excavation may require warmer periods
 - Some materials become too rigid to work with (liners)?
 - Some equipment cannot be safely used in extreme cold
 - Extreme limited daylight during winter - 0 to 4 hours

- Safety
- Ability to see work itself
- Implications for air permitting
 - Too cold at times to safely conduct field monitoring
 - Monitoring instrumentation often fails during cold weather – batteries expire quickly.
 - Extreme cold also requires the presence of backup heat and power to protect human life. Standby life safety equipment (including portable equipment) is not treated as such in permitting.
 - Some equipment is not certified to use in extreme cold.
- **No human population impacted**
 - In a number of remote industrial settings in Alaska, there is no local human population that is impacted.
 - Strict ambient air boundaries are established for both short-term or long-term facilities that have no relationship to the risk posed by the emissions from these facilities.
 - Current practices of establishing ambient air boundaries are inconsistent with goal of minimizing a development footprint “footprint”

Attachment B: Comparison of Fees

Provided to the Air Permits Work Group by EPA

| PA | Current Fee (\$) | \$ Collected | Comments |
|--------------------|------------------------|--------------|--------------------|
| NH | 47.25/ton of emissions | 5.2 M | |
| RI | 81.20 | 2.3 M | |
| ME | 18.87 | 7.3 M | |
| VT | 32.80 | 628 K | |
| CT | 59 | | |
| MA | 25.14 | 7.5 M | |
| NJ | 34.85 | 39.3 M | |
| NY | 45 | 66.2 M | |
| PR | 31 | 8.3 M | |
| VI | 18 | 2.4 M | |
| DC | 33.80 | 515 K | |
| MD | 34.85 | 6.1 M | CY98 and 99 only |
| VA | 33.44 | 18.6 M | CY99 and 2000 only |
| WVA | 18.45 | 7 M | CY99 and 2000 only |
| Allegheny County | 42 | 5.7 M | |
| PA | No response | | |
| DE | | 17.2 M | |
| AL | 20 | 32.4 M | |
| Jefferson County | 23 | 6.2 M | |
| Huntsville | 33.82 | 186 K | |
| FL | 25 | 55.7 M | |
| GA | 28 | 64.3 M | |
| KY | 27.50 | 32.8 M | |
| Jefferson County | 33.82 | 7.1 M | |
| MI | 20 | 22.5 M | |
| NC | 16.91 | 45.2 M | |
| Mecklenburg County | 32 | 2.2 M | |

| | | | |
|-----------------------------|--------------|--------|----------------------------------|
| Forsyth County | 30.57 | 779 K | |
| Western NC | 13.53 | 1.4 M | |
| SC | 33.82 | 37 M | |
| TN | 21.70; 13 | 24.7 M | Two fees are actual v. potential |
| Nashville/Davidson Counties | 25 | 2.5 M | |
| Chattanooga/Hamilton | 31.33; 18.80 | 1.7 M | Two fees are actual v. potential |
| Memphis/Shelby | 29.65 | 1.7 M | Excludes 2000 |
| Knox County | 33.85 | 827 K | |
| IL | 13.50 | 50 M | |
| IN | 33 | 56.6 M | |
| MI | 34 | 53.1 M | |
| MN | 25 | 41.3 M | |
| OH | 34.85 | 40.2 M | FY96-98 |
| WI | 33.80 | 68 M | |
| AR | 19.12 | | |
| LA | No response | | |
| NM | 10.25 | 18.8 M | |
| Alb. NM | 31 | 2.7 M | |
| OK | 17.51 | 4.2 M | |
| TX | 26 | | |
| IA | 24.50 | 34.1 M | |
| KS | 13 | 22.1 M | |
| MO | 25.70 | 5.1 M | 99 only |
| NB | No response | | |
| Omaha | 31.50 | 2.3 M | |
| Lincoln | 33.82 | 1.9 M | |
| WY | 10 | 9.6 M | |
| UT | 31.22 | 19.2 M | |
| SD | 6 | 2.9 M | |
| ND | 10 | 5.7 M | |

| | | | |
|------------------|-------------|-------------|-----------|
| MT | 21.12 | 7.4 M | |
| CO | 14.98 | 18.3 M | |
| R9 States/locals | No response | | |
| AK | No response | | |
| ID | 30 | 7.1 M | |
| OR | 33.63 | 18.3 M | |
| LRAPA | 33.63 | 2.1 M | |
| WA | No response | | |
| Benton County | No response | | |
| NWAPA | No response | | |
| Olympic* | * | 109 K | |
| Puget* | * | 5.6 M | |
| Spokane County | * | 575 K | |
| SWAPCA | No response | | |
| Yakima | 32.58 | 103 K | 2000 only |
| | | \$1 Billion | |

* Information provided but too complicated to summarize here.

Note: In some cases, I guessed at amounts due to the complexity of certain State fee estimates or noted a cost/ton figure but left off additional fees due to keeping this simple. This is not meant to represent true figures (only gross amounts), so use this information in that vein.

Goal

*Adopted
as Amended*

3/27/03

13-GH1059\D
Lauterbach
3/27/03

pages 7-25

CS FOR HOUSE BILL NO. 160(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered:
Referred:

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the emission control permit program; relating to fees for that
2 program and to the accounting of receipts deposited in the emission control permit
3 receipts account; and providing for an effective date."

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

5 * Section 1. AS 37.05.146(c) is amended by adding a new paragraph to read:

6 (77) emission control permit receipts account (AS 46.14.265).

7 * Sec. 2. AS 37.10.058(2) is amended to read:

8 (2) "designated regulatory service" means a regulatory service
9 provided under the following regulatory programs:

10 (A) control of solid waste facilities under AS 46.03.020(10)(D)
11 and (E);

12 (B) regulation of the disposal of waste into waters of the state
13 under AS 46.03.100;

14 (C) certification of federal permits or authorizations under 33

L

1 a construction permit under (a) of this section, before constructing, installing,
2 modifying, operating, or establishing a stationary source the owner and operator shall
3 obtain a minor permit from the department if the stationary source is of a type
4 classified under AS 46.14.020

5 (1) as having the potential to violate the ambient air quality standards;
6 or

7 (2) under a finding by the department that public health or air quality
8 effects provide a reasonable basis to regulate the stationary source.

9 * Sec. 15. AS 46.14.140(a) is amended to read:

10 (a) The department shall adopt regulations to address substantive and
11 procedural elements of the emission control permit program established under this
12 chapter that are not addressed in statute, except elements that relate only to the internal
13 management of the department and do not affect the public or govern the way the
14 department deals with the public. The regulations must be reasonable and adequate,
15 and provide flexibility in the operation of a stationary source [FACILITY] consistent
16 with 42 U.S.C. 7401 - 7671q (Clean Air Act), as amended, and applicable federal
17 regulations. Except for regulations concerning minor permits required under
18 AS 46.14.130(c), the [THE] regulations must include

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

21 (2) monitoring, recordkeeping, and reporting requirements for
22 facilities that are subject to AS 46.14.130(b), which must comply with the
23 requirements established for state operating permit programs in 40 C.F.R. 70.6,
24 but which may be ^{modified to} supplemented by additional requirements that take into
25 account this state's unique conditions;

26 (3) procedures for preparation and submission of a monitoring,
27 reporting, and quality assurance plan and, if required, a compliance schedule
28 describing how a permitted stationary source [FACILITY] will comply with the
29 applicable requirements of this chapter;

30 (4) [(3)] procedures for

31 (A) specifying when permit applications and renewal requests

1 (31) "major modification" means a change that meets the definition of
2 "major modification" under either 40 C.F.R.^{51.} 165 or 40 C.F.R.^{51.} 166;

3 (32) "major stationary source" means a stationary source or physical
4 change that meets the definition of "major stationary source" under either 40 C.F.R.^{51.}
5 165 or 40 C.F.R.^{51.} 166;

6 (33) "regulated air pollutant" means an air pollutant subject to
7 regulation under 42 U.S.C. 7401 - 7671q (Clean Air Act);

8 (34) "stack" has the meaning given in 40 C.F.R. 51.100;

9 (35) "stationary source" has the meaning given in 40 C.F.R. 51.166(b);

10 * Sec. 60. (a) AS 46.14.990(1), 46.14.990(7), 46.14.990(11), 46.14.990(22),
11 46.14.990(23), and 46.14.990(25) are repealed.

12 (b) AS 46.14.240(c) is repealed.

13 * Sec. 61. The uncodified law of the State of Alaska is amended by adding a new section to
14 read:

15 TRANSITION: MINOR PERMITS. (a) If, on the day before the effective date of
16 sec. 12 of this Act, the owner or operator of a facility has a valid permit issued under
17 AS 46.14.130(a) or (b), as those provisions existed on the day before the effective date of sec.
18 13 of this Act, and is required to obtain a minor permit under AS 46.14.130(c), enacted by
19 sec. 14 of this Act, the previously issued valid permit remains valid until the earliest of the
20 following occurs:

21 (1) that permit is revoked by the department under AS 46.14;

22 (2) the department issues or denies issuance of the application for a minor
23 permit.

24 (b) In this section,

25 (1) "department" means the Department of Environmental Conservation;

26 (2) "facility" has the meaning given in AS 46.14.990(11), as that provision
27 existed on the day before the effective date of sec. 60(a) of this Act.

28 * Sec. 62. The uncodified law of the State of Alaska is amended by adding a new section to
29 read:

30 TRANSITION: REGULATIONS. On or before May 31, 2004, the Department of
31 Environmental Conservation shall amend the department's regulations governing the

1 U.S.C. 1341 (sec. 401, Clean Water Act);

2 (D) a coastal management consistency determination relating to
3 a permit or authorization issued under a program listed in (A) - (C) of this
4 paragraph, if the determination is made by the agency issuing the permit or
5 authorization; [AND]

6 (E) any authorization for the use or appropriation of water
7 under AS 46.15; and

8 (F) administration of emission control permits for the air
9 quality control program under AS 46.14:

10 * Sec. 3. AS 46.14.010(b) is amended to read:

11 (b) Unless the governor has determined that an emergency exists that requires
12 emergency regulations under AS 44.62.250, the department may adopt the following
13 types of regulations only after the procedures established in (a), (c), and (d) of this
14 section and compliance with AS 46.14.015:

15 (1) a regulation that establishes an ambient air quality standard for an
16 air pollutant [CONTAMINANT] for which there is no corresponding federal
17 standard;

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

20 (3) a regulation that establishes an equivalent emission limitation for a
21 hazardous air pollutant [CONTAMINANT] for which the federal administrator has
22 not adopted a corresponding maximum achievable control technology standard; or

23 (4) a regulation that regulates emissions from an emission unit [A
24 SOURCE] or stationary source [FACILITY] or establishes an emission standard
25 under the authority of AS 46.14.120(e) or 46.14.130(c)(2) [, 46.14.130(a)(3)(B), OR
26 46.14.130(b)(4)(B)].

27 * Sec. 4. AS 46.14.010(c) is amended to read:

28 (c) In preparation for peer review under AS 46.14.015 and before adopting a
29 regulation described under (b) of this section, the department shall

30 (1) find in writing that exposure profiles and either meteorological
31 conditions or emission unit [SOURCE] characteristics in the state or in an area of the

1 state reasonably require the ambient air quality standard, or emission standard to
2 protect human health and welfare or the environment; this paragraph does not apply to
3 a regulation under (b)(3) of this section;

4 (2) find in writing that the proposed standard or emission limitation is
5 technologically feasible; and

6 (3) prepare a written analysis of the economic feasibility of the
7 proposal.

8 * Sec. 5. AS 46.14.010(d) is amended to read:

9 (d) Before adopting a regulation described in (b)(2) of this section, the
10 department shall find in writing that exposure profiles and either meteorological
11 conditions or emission unit [SOURCE] characteristics are significantly different in
12 the state or in an area of the state from those upon which the corresponding federal
13 regulation is based.

14 * Sec. 6. AS 46.14.010(e) is amended to read:

15 (e) When incorporated into more than one permit, emission standards and
16 limitations, emissions monitoring and reporting requirements, and compliance
17 verification requirements that are generally applicable statewide or are generally
18 applicable to individual emission unit [SOURCE] or stationary source [FACILITY]
19 types shall be adopted in regulation unless they have been requested by the owner and
20 operator to whom the permit is issued. The department shall, by regulation, adopt a
21 standard, limitation, or requirement described in this [THE] subsection as soon as its
22 general applicability is reasonably foreseeable.

23 * Sec. 7. AS 46.14.010(f) is amended to read:

24 (f) An emission standard adopted by the department may be applicable to
25 individual emission units [SOURCES] within a stationary source [FACILITY] or to
26 all emission units [SOURCES] within a stationary source [FACILITY]. For
27 purposes of determining compliance with applicable regulations and with permit
28 limitations, the department may allow numerical averaging of the emissions of each
29 air pollutant [CONTAMINANT] from several emission units [SOURCES] within a
30 stationary source [FACILITY] if

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

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

3 * Sec. 8. AS 46.14.020 is amended to read:

4 Sec. 46.14.020. Classification of stationary sources [FACILITIES] or
5 emission units [SOURCES]; reporting. (a) The department, by regulation, may
6 classify stationary sources [FACILITIES] or emission units [SOURCES] that, in the
7 department's determination, are likely to cause or contribute to air pollution, according
8 to the levels and types of emissions and other characteristics that relate to air quality.
9 The department may make a classification under this subsection applicable to the state
10 as a whole or to a designated area of the state. The department shall base the
11 classifications on consideration of health, economic, and social factors, sensitivity of
12 the receiving environment, and physical effects on property.

13 (b) The department or a local air quality control program authorized under
14 AS 46.14.400 may require an owner and operator of a stationary source [FACILITY]
15 or emission unit [SOURCE] classified under this section to report information to the
16 department or the authorized local program concerning location, size, and height of
17 stacks [CONTAMINANT OUTLETS] or area emission units [SOURCES], processes
18 employed, fuels used, the nature and time periods or duration of emissions, and other
19 information relevant to air quality that is available or reasonably capable of being
20 calculated and compiled.

21 * Sec. 9. AS 46.14.120(a) is amended to read:

22 (a) Before constructing, installing, modifying, [RECONSTRUCTING,] or
23 establishing a stationary source [FACILITY] subject to AS 46.14.130(a), the owner
24 and operator shall obtain a construction permit under this chapter.

25 * Sec. 10. AS 46.14.120(b) is amended to read:

26 (b) Except when considered to be in compliance with this chapter under
27 AS 46.14.275 or under a regulation adopted under AS 46.14.140(a)(11), the owner and
28 operator shall obtain an operating permit under this chapter before operating a
29 stationary source [FACILITY] subject to AS 46.14.130(b).

30 * Sec. 11. AS 46.14.120(e) is amended to read:

31 (e) If the federal administrator exempts a stationary source from the

1 requirements of 42 U.S.C. 7661a(a) (Clean Air Act, sec. 502(a)), the commissioner
2 shall consider the factors used by the administrator in reaching that determination and,
3 by regulation, shall issue a similar determination unless public health or air quality
4 effects provide a reasonable basis to regulate the stationary source.

5 * Sec. 12. AS 46.14.120 is amended by adding new subsections to read:

6 (f) The department may exempt or defer a stationary source from the
7 requirement of AS 46.14.130(b) to the extent allowed under 40 C.F.R. 70.3(b).

8 (g) Before constructing, installing, modifying, operating, or establishing a
9 stationary source subject to AS 46.14.130(c), the owner or operator shall obtain a
10 minor permit under this chapter.

11 * Sec. 13. AS 46.14.130 is amended to read:

12 Sec. 46.14.130. Stationary sources [FACILITIES] requiring permits. (a)
13 The [BEFORE CONSTRUCTING, INSTALLING, MODIFYING,
14 RECONSTRUCTING, OR ESTABLISHING A FACILITY, THE] owner and
15 operator shall obtain a construction permit from the department before beginning
16 actual construction of [~~IF THE FACILITY IS~~] any one of the following:

17 (1) a new major stationary source [FACILITY THAT EMITS OR
18 HAS THE POTENTIAL TO EMIT 250 TONS PER YEAR (TPY) OR MORE OF A
19 REGULATED AIR CONTAMINANT];

20 (2) a major modification [NEW FACILITY OF A TYPE
21 CLASSIFIED UNDER AS 46.14.020 THAT EMITS OR HAS THE POTENTIAL TO
22 EMIT 100 TPY OR MORE OF A REGULATED AIR CONTAMINANT];

23 (3) a project subject to the construction permitting requirements
24 of 42 U.S.C. 7412(i) (Clean Air Act, sec. 112(i)) [A NEW FACILITY OF A TYPE
25 CLASSIFIED UNDER AS 46.14.020

26 (A) AS HAVING THE POTENTIAL TO VIOLATE THE
27 AMBIENT AIR QUALITY STANDARDS; OR

28 (B) UNDER A FINDING BY THE DEPARTMENT THAT
29 PUBLIC HEALTH OR AIR QUALITY EFFECTS PROVIDE A
30 REASONABLE BASIS TO REGULATE THE SOURCE;

31 (4) A NEW FACILITY THAT EMITS OR HAS THE POTENTIAL

1 TO EMIT 10 TPY OR MORE OF A HAZARDOUS AIR CONTAMINANT OR 25
2 TPY OR MORE, IN THE AGGREGATE, OF TWO OR MORE HAZARDOUS AIR
3 CONTAMINANTS;

4 (5) AN EXISTING FACILITY FOR WHICH

5 (A) A MODIFICATION IS PROPOSED THAT WOULD
6 INCREASE ACTUAL EMISSIONS OF AN AIR CONTAMINANT BY AN
7 AMOUNT EQUAL TO OR GREATER THAN THE EMISSION QUANTITY
8 SET OUT IN REGULATIONS ADOPTED UNDER AS 46.14.010, 46.14.020,
9 OR 46.14.140; OR

10 (B) RECONSTRUCTION IS PROPOSED].

11 (b) Except for the owner and operator of a stationary source exempted
12 under AS 46.14.120(e) or (f), the [THE] owner and operator of a stationary source
13 [FACILITY] shall obtain an operating permit from the department if the stationary
14 source [FACILITY IS A FACILITY SUBJECT TO (a) OF THIS SECTION OR A
15 FACILITY THAT]

16 (1) emits or has the potential to emit 100 TPY or more of a regulated
17 air pollutant [CONTAMINANT];

18 (2) emits or has the potential to emit 10 TPY or more of a hazardous
19 air pollutant [CONTAMINANT] or 25 TPY or more, in the aggregate, of two or more
20 hazardous air pollutants [CONTAMINANTS];

21 (3) contains an emission unit [A SOURCE] subject to federal new
22 source performance standards under 42 U.S.C. 7411 (Clean Air Act, sec. 111) or
23 national emission standards for hazardous air pollutants issued under 42 U.S.C. 7412
24 (Clean Air Act, sec. 112); or

25 (4) contains another stationary source designated by

26 [(A)] the federal administrator by regulation [; OR

27 (B) THE DEPARTMENT UNDER A FINDING THAT
28 PUBLIC HEALTH OR AIR QUALITY EFFECTS PROVIDE A
29 REASONABLE BASIS TO REGULATE THE SOURCE].

30 * Sec. 14. AS 46.14.130 is amended by adding a new subsection to read:

31 (c) Unless the owner and operator of a stationary source are required to obtain

1 are to be submitted;

2 (B) specifying the time duration for department review of
3 permit applications;

4 (C) processing and reviewing an application;

5 (D) providing public notice, including opportunity for public
6 comment and hearing; and

7 (3) issuing permits, including procedures for issuing permits
8 for temporary operations or open burn activities;

9 (5) [(4)] reasonable standard permit conditions, including conditions
10 for

11 (A) emission standards and limitations;

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

14 (C) inspection and entry;

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

17 (E) annual certification of compliance;

18 (F) excess emission or process deviation reporting; and

19 (G) equipment malfunctions and emergencies;

20 (6) [(5)] fees and procedures for collecting fees;

21 (7) [(6)] provisions addressing late payment or nonpayment of fees,
22 which may include assessment of penalties and interest or refusal to issue, amend,
23 modify, or renew an air quality control permit;

24 (8) [(7)] the duration of permits;

25 (9) [(8)] procedures for modifying or amending a permit that provide
26 flexibility in the operation of the stationary source [FACILITY], including
27 procedures to allow changes to a permitted stationary source [FACILITY] without
28 requiring a permit modification, consistent with the purposes of this chapter and with
29 42 U.S.C. 7401 - 7671q (Clean Air Act);

30 (10) [(9)] reasonable provisions for renewing, reopening, revoking and
31 reissuing, and terminating a permit consistent with the purposes of this chapter and 42

1 U.S.C. 7401 - 7671q (Clean Air Act);

2 (11) [(10)] provisions allowing for physical or operational limitations
3 that will reduce a stationary source's [FACILITY'S] emissions to levels below those
4 that would make the stationary source [FACILITY] subject to part or all of
5 AS 46.14.120 and 46.14.130;

6 (12) [(11)] provisions authorizing stationary source [FACILITY]
7 operation while a permit application is pending, consistent with 42 U.S.C. 7661b(d)
8 (Clean Air Act, sec. 503(d));

9 (13) [(12)] provisions for ensuring that compliance with an operating
10 permit issued under this chapter will be considered to be compliance with 42 U.S.C.
11 7661a (Clean Air Act, sec. 502) and other provisions of state or federal law
12 specifically provided for by the department consistent with 42 U.S.C. 7401 - 7671q
13 (Clean Air Act) and regulations adopted under state and federal law; and

14 (14) [(13)] provisions allowing for certification of inspectors who
15 evaluate compliance with the terms and conditions of a permit, order, regulation, or
16 other provision of law authorized under this chapter.

17 * Sec. 16. AS 46.14.140(b) is amended to read:

18 (b) A permit issued under this chapter may not require a person to use

19 (1) machinery, devices, or equipment of a particular type, from a
20 particular supplier, or produced by a particular manufacturer; or

21 (2) specific methods, processes, procedures, or designs for the
22 management and operation of a stationary source [FACILITY] regulated under this
23 chapter except to the extent that the federal administrator has

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

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

29 * Sec. 17. AS 46.14.150(a) is amended to read:

30 (a) The owner and operator of a stationary source [FACILITY] required to
31 have an operating permit under this chapter shall submit the required application and

1 other information required by the department by regulation no later than [(1)] 12
2 months after the date on which the stationary source [FACILITY] becomes subject to
3 AS 46.14.120(b) [; OR (2) 60 DAYS BEFORE BEGINNING CONSTRUCTION OF
4 A SOURCE IF THE FACILITY CONTAINING THE SOURCE IS A NEW
5 FACILITY THAT IS NOT REQUIRED TO OBTAIN A CONSTRUCTION PERMIT
6 UNDER AS 46.14.130(a), WHICHEVER IS EARLIER].

7 * Sec. 18. AS 46.14.170(b) is amended to read:

8 (b) Notwithstanding (a) of this section, the department may establish a phased
9 schedule for acting on operating permit applications submitted within 12 months
10 following the date on which the federal administrator approves the state program
11 under 42 U.S.C. 7661a(d). A phased schedule must ensure that at least one-third of the
12 applications submitted during the first 12 months of the state's operation of its permit
13 program after federal approval will be acted on by the department during each of the
14 first three 12-month periods following federal approval of the program. The
15 department shall give priority to the issuance of permits for new stationary sources
16 [FACILITIES] and modifications of existing stationary sources [FACILITIES].

17 * Sec. 19. AS 46.14.170(c) is amended to read:

18 (c) Failure by the department to act within the time limits established in or
19 under (a), [OR] (b), or (d) of this section is considered to be a final agency action, but
20 only for the purpose of judicial review to determine whether the court will require that
21 action be taken by the department.

22 * Sec. 20. AS 46.14.170 is amended by adding a new subsection to read:

23 (d) The department shall issue or deny a minor permit under AS 46.14.130(c)
24 within 30 days after the close of the public comment period or within 30 days after
25 receipt of the complete application by the department if a public comment period is
26 not required under this chapter.

27 * Sec. 21. AS 46.14.180 is amended to read:

28 **Sec. 46.14.180. Monitoring.** Monitoring by the owner and operator of stack
29 emissions or ambient air quality shall be required by the department only for purposes
30 of demonstrating compliance with applicable permit program requirements.
31 Monitoring requirements must be reasonable and based on test methods, analytical

1 procedures, and statistical conventions approved by the federal administrator or the
2 department or otherwise generally accepted as scientifically competent. Unless
3 otherwise agreed to by the owner and operator and the department,

4 (1) the department may not require an owner and operator of an
5 emission unit [A SOURCE] to monitor emissions or ambient air quality solely for the
6 purpose of scientific investigation or research; and

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

9 * Sec. 22. AS 46.14.190 is amended to read:

10 **Sec. 46.14.190. Single permit.** (a) Except as provided in (b) of this section,
11 the department shall issue only a single operating permit to a stationary source
12 [FACILITY], regardless of whether the stationary source [A FACILITY] contains a
13 single emission unit [SOURCE] or multiple emission units [SOURCES].

14 (b) The department may, upon request of a stationary source [FACILITY]
15 owner or operator, issue more than one permit for the stationary source [A
16 FACILITY]. Substantive and procedural requirements otherwise applicable to a
17 stationary source [FACILITY] remain applicable regardless of whether the
18 stationary source [FACILITY] owner and operator apply for one or more permits.

19 * Sec. 23. AS 46.14.200 is amended to read:

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

28 * Sec. 24. AS 46.14.210 is amended to read:

29 **Sec. 46.14.210. General operating permits.** After notice and opportunity for
30 public comment and hearing, the department may, unless the permit is disapproved by
31 the federal administrator, establish a general operating permit that would be applicable

1 to more than one stationary source [FACILITY] determined by the department to be
2 similar in emission unit [SOURCE] structure. A general operating permit must
3 contain provisions that meet the requirements of this chapter that are applicable to
4 operating permits. A general operating permit issued to a particular person takes
5 effect when the person's application is determined to be complete unless the
6 department notifies the applicant that the general permit is not applicable to the
7 person's stationary source [FACILITY].

8 * Sec. 25. AS 46.14 is amended by adding a new section to read:

9 **Sec. 46.14.211. General minor permits.** After notice and opportunity for
10 public comment and hearing, the department may establish a general minor permit that
11 would be applicable to more than one stationary source determined by the department
12 to be similar in structure. If authorized by the department, a permit issued under this
13 section may be valid for multiple locations in this state. A general minor permit must
14 contain provisions that meet the requirements of this chapter that are applicable to a
15 minor permit.

16 * Sec. 26. AS 46.14.215 is amended to read:

17 **Sec. 46.14.215. Temporary operations.** For purposes of AS 46.14.130(L),
18 the [THE] department may issue a single operating permit under AS 46.14.170,
19 authorizing a stationary source [FACILITY] to operate at specific multiple locations
20 in the state for temporary periods of time. A permit described in this section is valid
21 only for the specific locations identified in the application and authorized by the
22 department. The department may not issue a permit under this section unless the
23 permit contains conditions that will ensure compliance with this chapter at each
24 authorized location, including compliance with ambient air quality standards and
25 applicable increment or visibility requirements adopted under this chapter. A permit
26 under this section must require the owner and operator to notify the department at least
27 10 [30] days before a change in location of a stationary source [FACILITY]
28 permitted under this section.

29 * Sec. 27. AS 46.14.240(a) is amended to read:

30 (a) The owner or operator of a stationary source [FACILITY] who is
31 required to apply for a permit under AS 46.14.130 shall pay to the department all

1 assessed permit administration fees established under (b) of this section except that the
2 person named in a permit issued under AS 46.14.170 shall pay assessed permit
3 administration fees incurred after the date the permit is issued.

4 * Sec. 28. AS 46.14.240(b) is repealed and reenacted to read:

5 (b) The department shall establish by regulation permit administration fees in
6 accordance with AS 37.10.050 - 37.10.058.

7 * Sec. 29. AS 46.14.240(c) is amended to read:

8 (c) In (a) and (b) of this section, "permit administration fees" are fees assessed
9 to recover costs incurred by the department and other state or local governmental
10 agencies, to the extent required under 42 U.S.C. 7661a(b)(3)(A) and federal
11 regulations implementing that provision, for the following services to a specific
12 stationary source [FACILITY] that are performed in order to implement the permit
13 program established under this chapter:

14 (1) providing preapplication consultation, assistance, and completeness
15 review of applications for a permit, permit amendment, permit modification, or
16 renewal, except as provided in (d) of this section;

17 (2) reviewing or assisting in preparation of stationary source
18 [FACILITY] specific permit support documents, including on-site evaluations, except
19 as provided in (d) of this section;

20 (3) receiving, reviewing, preparing, processing, and issuing permits,
21 permit amendments, modifications, reopenings, renewals and revocations, and
22 reissuance;

23 (4) preparing general operating permits under AS 46.14.210; however,
24 costs must be allocated on an equitable basis to each stationary source [FACILITY]
25 covered by the general operating permit;

26 (5) performing stationary source [FACILITY] inspections and
27 compliance evaluations;

28 (6) reviewing, compiling, and reporting stationary source
29 [FACILITY] specific emission, ambient monitoring, or process measurement data;

30 (7) preparing, evaluating, or processing plans or documents to obtain
31 stationary source [FACILITY] compliance or rectify noncompliance with permit

1 terms and conditions, but not including any enforcement actions; and

2 (8) assessing and collecting delinquent permit administration fees and
3 emission fees.

4 * Sec. 30. AS 46.14.240(d) is amended to read:

5 (d) Costs incurred by the department and other state or local governmental
6 agencies that are assessed against small business [FOR SERVICES DESCRIBED
7 IN (c)(1) - (2) OF THIS SECTION TO] facilities that qualify for assistance under
8 AS 46.14.300 - 46.14.310 shall be recovered from emission fees under
9 AS 46.14.250(h)(2) for the following services:

10 (1) providing preapplication consultation, assistance, and
11 completeness review of applications for a permit, an amendment, a permit
12 modification, or a renewal of a permit;

13 (2) reviewing or assisting in the preparation of specific documents
14 to support a permit for a stationary source; the documents described in this
15 paragraph include on-site evaluations.

16 * Sec. 31. AS 46.14.250 is amended to read:

17 Sec. 46.14.250. Emission fees. (a) A person named as permittee in a permit
18 issued under this chapter [AS 46.14.170] shall pay to the department all assessed
19 emission fees established under this section.

20 (b) The department shall establish by regulation an emission fee rate. The rate
21 shall be set on the basis of dollars per ton of air pollutant [CONTAMINANT]
22 emitted. The department shall assess emission fees annually on or before July 1 based
23 on a stationary source's [FACILITY'S] estimated assessable emissions for the
24 subsequent fiscal year. The department may allow installment payments of assessed
25 emission fees.

26 (c) For a stationary source [FACILITY] that begins operation during a fiscal
27 year, the department shall prorate the first year's fee to cover the time period occurring
28 before the next annual payment date. The owner or operator shall pay the initial
29 emission fee upon commencement of lawful stationary source [FACILITY]
30 operation unless authorized to pay by installments under (b) of this section. The first
31 year's emission fee may not duplicate a fee paid by a permittee under AS 44.46.025

1 for the same emission units [SOURCES] for the same time period. If the fees would
2 otherwise be duplicative, the department shall provide a credit toward the emission fee
3 in the amount of the unused balance of the fee collected under AS 44.46.025. The
4 unused balance to be credited shall be based on prorating the total original fee under
5 AS 44.46.025 for the time period for which an emission fee applies.

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

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

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

- 27 (1) fees assessed;
- 28 (2) alternative fee rates or formulas;
- 29 (3) types, sizes, or categories of stationary sources [FACILITIES],
30 their respective emission quantities, and their previous or proposed fee burden;
- 31 (4) apparent inequities encountered in the initial fee rate;

1 (5) total costs incurred or anticipated to be incurred under (h) of this
2 section; and

3 (6) other factors that ensure fair distribution of the costs described in
4 (h) of this section.

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

8 (h) In this section,

9 (1) "assessable emission" means the quantity of each air pollutant
10 [CONTAMINANT] for which emission fees are assessed and is the lesser of

11 (A) the stationary source's potential to emit [ANNUAL
12 RATE OF EMISSIONS], in tons per year, [OF] each air pollutant
13 [CONTAMINANT AUTHORIZED BY THE FACILITY'S OPERATING
14 PERMIT]; or

15 (B) the projected annual rate of emissions, in tons per year, of
16 each air pollutant [CONTAMINANT] by the stationary source [FACILITY]
17 based upon previous actual annual emissions if the permittee can demonstrate
18 to the department its previous actual annual rate of emissions through
19 monitoring, modeling, calculations, or other method acceptable to the
20 department;

21 (2) "emission fees" mean fees assessed to recover costs incurred by the
22 department and other state or local governmental agencies, to the extent required
23 under 42 U.S.C. 7661a(b)(3)(A) and federal regulations implementing that provision,
24 for execution of the permit program established under this chapter that are generally
25 not associated with service provided to a specific stationary source [FACILITY],
26 including the costs incurred by the department or a local air quality program to comply
27 with AS 46.14.010 - 46.14.015; the costs may include rent, utilities, permit program
28 management, administrative and accounting services, and other costs as identified by
29 the department in regulations; the fees shall also be sufficient to recover the cost of the
30 small business assistance program under AS 46.14.300 - 46.14.310.

31 * Sec. 32. AS 46.14.250(h)(2) is amended to read:

1 (2) "emission fees" mean fees assessed to recover costs incurred by the
2 department and other state or local governmental agencies for the implementation of
3 minor permits. for the implementation of construction permits. and for operating
4 permits [,] to the extent required under 42 U.S.C. 7661a(b)(3)(A) and federal
5 regulations implementing that provision, for execution of the permit program
6 established under this chapter that are generally not associated with service provided
7 to a specific facility, including the costs incurred by the department or a local air
8 quality program to comply with AS 46.14.010 - 46.14.015; the costs may include rent,
9 utilities, permit program management, administrative and accounting services, and
10 other costs as identified by the department in regulations; the fees shall also be
11 sufficient to recover the cost of the small business assistance program under
12 AS 46.14.300 - 46.14.310.

13 * Sec. 33. AS 46.14.260(b) is amended to read:

14 (b) The money deposited into the clean air protection fund may only be used
15 to cover the reasonable direct and indirect costs required to support the permit
16 program under this chapter and the activities of the small business assistance program
17 that are directed at stationary sources [FACILITIES] subject to this chapter, not
18 including court costs or other costs associated with an enforcement action.

19 * Sec. 34. AS 46.14 is amended by adding a new section to read:

20 Sec. 46.14.265. Emission control permit receipts account. (a) The
21 emission control permit receipts account is established in the state treasury. Under
22 AS 37.05.146(c), money received by the department in payment of fees under
23 AS 46.14.240 and 46.14.250 and under regulations adopted under AS 46.14.140, other
24 than fees described in AS 46.14.260(a), shall be deposited in the account.
25 Appropriations from the account are not made from the unrestricted general fund.

26 (b) Nothing in this section creates a dedicated fund.

27 * Sec. 35. AS 46.14.280(a) is amended to read:

28 (a) After 30 days' written notice to the permittee, the department
29 (1) may terminate, modify, or revoke and reissue a construction or
30 operating, or minor permit if the department finds that

31 (A) the permit was obtained by misrepresentation of material

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

fact or by failure of the owner and operator to disclose fully the facts relating to issuance of the permit;

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

(C) the permittee has failed to construct or modify a stationary source [FACILITY] within the time period specified in a construction permit, if any, required under AS 46.14.130(a);

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

(A) the permit contains a material mistake; or

(B) there has been a material change in the quantity or type of air pollutant [CONTAMINANT] emitted from the stationary source [FACILITY]; or

(3) shall reopen a permit issued under this chapter

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

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

* Sec. 36. AS 46.14.285(a) is amended to read:

(a) A permittee may request

(1) a permit amendment that provides for administrative changes to a permit that do not result in material changes in permit terms or conditions, such as

1 changes in the name of the owner or operator, mailing address, registered agent, or
2 assessable emissions;

3 (2) an expedited authorization for minor changes in permit terms and
4 conditions that provide for flexibility in the operation of a stationary source
5 [FACILITY] consistent with 42 U.S.C. 7661a(b)(10) (Clean Air Act, sec. 502(b)(10)),
6 and regulations adopted under that paragraph; the department may adopt regulations
7 that include procedures under which the public may participate when an expedited
8 authorization is requested under this paragraph; or

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

12 * Sec. 37. AS 46.14.290 is amended to read:

13 **Sec. 46.14.290. Permit as shield.** (a) To the extent allowed under 42 U.S.C.
14 7661c(f) (Clean Air Act, sec. 504(f)), a permittee is considered in compliance with
15 applicable requirements of this chapter, regulations adopted under this chapter and 42
16 U.S.C. 7401 - 7671q (Clean Air Act) and regulations adopted under it, if

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

19 (2) the requirements are determined in writing not to be applicable to
20 the permitted stationary source [FACILITY]; a determination made under this
21 paragraph shall be included in the permit.

22 (b) This section does not alter or affect

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

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

27 (3) the ability of the department to obtain information from an owner
28 or operator of a stationary source [FACILITY] under AS 46.14.020(b).

29 * Sec. 38. AS 46.14.300(c) is amended to read:

30 (c) Except as provided in AS 46.14.310(b), the department shall provide
31 assistance as described in (b) of this section to a requesting stationary source

1 [FACILITY] that is not a small business concern as defined in 15 U.S.C. 631 but that
2 is subject to the requirements of this chapter if the legislature appropriates money from
3 the general fund for this purpose.

4 * Sec. 39. AS 46.14.400(c) is amended to read:

5 (c) If the department finds that the location, character, or extent of particular
6 concentrations of population, air pollutant emission units [CONTAMINANT
7 SOURCES], the geographic, topographic, or meteorological considerations, or a
8 combination of these factors make impracticable the maintenance of appropriate levels
9 of air quality without an areawide air pollution control program, the department may
10 determine the boundaries within which a local air quality control program is necessary
11 and direct that a local air quality control program spanning those boundaries is the
12 only acceptable alternative to direct state administration.

13 * Sec. 40. AS 46.14.400(f) is amended to read:

14 (f) A municipality or local air quality district's program may, upon a finding
15 by the local agency and an affirmative agreement by the department, establish a more
16 stringent requirement than the stationary emission unit [SOURCE] permit program
17 authorized under this chapter if public health or air quality effects provide a reasonable
18 basis to regulate the emission unit [SOURCE] with the additional or more stringent
19 requirement and the municipality or district has used procedures substantially
20 equivalent to those required under AS 46.14.010 - 46.14.015 before establishing the
21 more stringent requirement. This subsection does not prohibit a municipality or local
22 air quality control district from establishing a mobile source emissions program more
23 stringent than the state program without making findings of public health or air quality
24 effects or using procedures substantially equivalent to those required under
25 AS 46.14.010 - 46.14.015. In this subsection, "mobile source" does not include tank
26 vessels or other watercraft.

27 * Sec. 41. AS 46.14.410(e) is amended to read:

28 (e) If the department finds that control of a particular class of stationary
29 source [FACILITY] or emission unit [SOURCE], because of its complexity or
30 magnitude, is beyond the reasonable capability of the municipality or the local air
31 quality district or may be more efficiently and economically controlled at the state

1 level, the department may assume and retain jurisdiction over the class of stationary
2 source [FACILITY] or emission unit [SOURCE]. Classifications under this
3 subsection may be based on the nature of stationary sources [FACILITIES] or
4 emission units [SOURCES] involved, their size relative to the size of the
5 communities in which they are located, or another basis established by the department.

6 * Sec. 42. AS 46.14.500(b) is amended to read:

7 (b) In adopting regulations under this section, the department shall ensure that
8 stationary sources [FACILITIES] located within 25 miles of the seaward boundary of
9 the state are subject to the same air quality control requirements that would be
10 applicable if the stationary source [FACILITY] were located in the corresponding
11 onshore area. For purposes of this subsection, stationary sources [FACILITIES]
12 located within 25 miles of the seaward boundary of the state include a vessel servicing
13 or associated with the stationary source [FACILITY] while at the stationary source
14 [FACILITY] or en route to or from the stationary source [FACILITY] and within 25
15 miles of the stationary source [FACILITY].

16 * Sec. 43. AS 46.14.500(c) is amended to read:

17 (c) In this section, "corresponding onshore area" means, with respect to a
18 stationary source [FACILITY] located within 25 miles of the seaward boundary of
19 the state, the onshore attainment or nonattainment area that is closest to the stationary
20 source [FACILITY], unless the commissioner determines that another area with more
21 stringent requirements relating to control and abatement of air pollution may
22 reasonably be expected to be affected by emissions from the offshore stationary
23 source [FACILITY]; this determination shall be based on the potential for air
24 pollutants [CONTAMINANTS] from the stationary source [FACILITY] to reach
25 the other onshore area and the potential of the air pollutants [CONTAMINANTS] to
26 affect the efforts of the other onshore area to attain or maintain a federal ambient air
27 quality standard set under 42 U.S.C. 7470 - 7492 (Title I, Part C, Clean Air Act) or a
28 state equivalent.

29 * Sec. 44. AS 46.14.515(a) is amended to read:

30 (a) An officer or employee of the department designated by the commissioner
31 or an inspector authorized by the commissioner and certified under regulations

1 adopted under AS 46.14.140(a)(13) may, upon presentation of credentials and at
2 reasonable times with the consent of the owner or operator, enter upon or through any
3 premises of a stationary source [FACILITY] regulated under this chapter to

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

5 (2) inspect any emission unit [SOURCE], monitoring equipment, or
6 method required to be used; or

7 (3) sample any emissions that the owner and operator of the stationary
8 source [FACILITY] is required to sample.

9 * Sec. 45. AS 46.14.540(a) is amended to read:

10 (a) When the commissioner finds that an act of God, act of war, act of
11 terrorism, or similar catastrophe necessitates emergency use of an unpermitted
12 emission unit [SOURCE] or emergency use of a permitted emission unit [SOURCE]
13 in a manner not authorized by the permit, the commissioner may waive procedural
14 requirements of this chapter and issue an order to authorize emergency use of the
15 emission unit [SOURCE]. When acting under this section, the commissioner shall
16 impose conditions necessary to protect life, human health, welfare, property, and the
17 environment and may impose other conditions the commissioner finds necessary and
18 appropriate.

19 * Sec. 46. AS 46.14.550 is amended to read:

20 **Sec. 46.14.550. Responsibilities of owner and operator; agent for service.**
21 Notwithstanding use of the conjunctive or disjunctive in a provision of this chapter,
22 before issuance of a permit under this chapter [AS 46.14.170] both the owner and
23 operator of a stationary source [FACILITY] are responsible for compliance with this
24 chapter and regulations adopted under this chapter. If the owner and operator of the
25 stationary source [FACILITY] are separate persons, only one person is required to
26 discharge a specific responsibility. After issuance of a permit under this chapter
27 [AS 46.14.170], only the permittee is responsible for permitted operations. The
28 permittee shall have a designated agent for service of process in the state.

29 * Sec. 47. AS 46.14.560 is amended to read:

30 **Sec. 46.14.560. Unavoidable malfunctions and emergencies.** Excess
31 emissions caused by an unavoidable emergency, malfunction, or nonroutine repairs of

1 an emission unit [A SOURCE] including pollution control equipment or process
2 equipment constitute an affirmative defense, when asserted under regulations adopted
3 under AS 46.14.140, to an action brought for noncompliance with a technology-based
4 emission standard. This section does not limit the department's power to enjoin the
5 emission or require corrective action. This provision is in addition to any emergency
6 or upset provision contained in an applicable requirement.

7 * Sec. 48. AS 46.14.990(2) is amended to read:

8 (2) "ambient air" has the meaning given in 40 C.F.R. 50.1 [MEANS
9 THAT PORTION OF THE ATMOSPHERE, EXTERNAL TO BUILDINGS, TO
10 WHICH THE GENERAL PUBLIC HAS ACCESS];

11 * Sec. 49. AS 46.14.990(5) is repealed and reenacted to read:

12 (5) "construction" has the meaning given in 40 C.F.R. 51.166(b);

13 * Sec. 50. AS 46.14.990(9) is amended to read:

14 (9) "emission" means a release of one or more air pollutants
15 [CONTAMINANTS] to the atmosphere;

16 * Sec. 51. AS 46.14.990(10) is repealed and reenacted to read:

17 (10) "emission limitation" and "emission standard" have the meaning
18 given in 40 C.F.R. 51.100;

19 * Sec. 52. AS 46.14.990(13) is repealed and reenacted to read:

20 (13) "fugitive emissions" has the meaning given in 40 C.F.R.
21 51.166(b);

22 * Sec. 53. AS 46.14.990(14) is amended to read:

23 (14) "hazardous air pollutant [CONTAMINANT]" means a pollutant
24 listed in or under 42 U.S.C. 7412(b) (Clean Air Act, sec. 112(b));

25 * Sec. 54. AS 46.14.990(16) is repealed and reenacted to read:

26 (16) "modification" has the meaning given in 42 U.S.C. 7411(a)
27 (Clean Air Act, sec. 111(a)) and 40 C.F.R. 60.14;

28 * Sec. 55. AS 46.14.990(18) is amended to read:

29 (18) "operator" means a person or persons who direct, control, or
30 supervise a stationary source or emission unit [FACILITY OR SOURCE] that has
31 the potential to emit an air pollutant [CONTAMINANT] to the atmosphere;

1 * Sec. 56. AS 46.14.990(19) is amended to read:

2 (19) "owner" means a person or persons with a proprietary or
3 possessory interest in a stationary source or emission unit [FACILITY OR
4 SOURCE] that has the potential to emit an air pollutant [CONTAMINANT] to the
5 atmosphere;

6 * Sec. 57. AS 46.14.990(21) is repealed and reenacted to read:

7 (21) "potential to emit" has the meaning given in 40 C.F.R. 51.166(b);

8 * Sec. 58. AS 46.14.990(24) is amended to read:

9 (24) "small business facility" means a stationary source [FACILITY]
10 that

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

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

15 (C) emits less than 100 TPY of regulated air pollutants
16 [CONTAMINANTS];

17 * Sec. 59. AS 46.14.990 is amended by adding new paragraphs to read:

18 (28) "air pollutant" has the meaning given in 42 U.S.C. 7602 (Clean
19 Air Act, sec. 302);

20 (29) "building, structure, facility, or installation" has the meaning
21 given in 40 C.F.R. 51.166(b) except that it includes a vessel

22 (A) that is anchored or otherwise permanently or temporarily
23 stationed within a locale;

24 (B) upon which a stationary source or stationary sources are
25 located; not including stationary sources engaged in propulsion of the vessel;
26 and

27 (C) that is used for an industrial process, excluding a tank
28 vessel in the trade of transporting cargo; in this subparagraph, "industrial
29 process" means the extraction of raw material or the physical or chemical
30 transformation of raw material in either composition or character;

31 (30) "emission unit" has the meaning given in 40 C.F.R. 51.166(b);

1 construction permit program established under AS 46.14.120(a), as amended by sec. 7 of this
2 Act, to implement the provisions of the federal new source review program amendments
3 published in the Federal Register for December 31, 2002, and the Department of
4 Environmental Conservation shall proceed to adopt regulations necessary to implement the
5 other changes made by this Act. The regulations take effect under AS 44.62 (Administrative
6 Procedures Act), but not before the effective date of the respective provision of this Act.

7 * Sec. 63. The uncodified law of the State of Alaska is amended by adding a new section to
8 read:

9 INSTRUCTION TO REGULATIONS ATTORNEY. (a) In regulations adopted by
10 the Department of Environmental Conservation to implement AS 46.14 and in effect on the
11 day before the effective date of secs. 59 and 60(a) of this Act, wherever the terms "facility"
12 and "source" are used, they shall be read as "stationary source" and "emission unit,"
13 respectively,

14 (1) when to do so would be consistent with the changes made by this Act; and
15 (2) until the Department of Environmental Conservation amends its
16 regulations consistent with the changes made by this Act.

17 (b) The regulations attorney is instructed to make changes in the Department of
18 Environmental Conservation regulations as described in (a) of this section.

19 * Sec. 64. Sections 3 - 27, 29, 31, 33, 35 - 59, 60(a), and 61 - 63 of this Act take effect
20 immediately under AS 01.10.070(c).

21 * Sec. 65. Sections 2, 28, 30, 32, and 60(b) of this Act take effect January 1, 2005.

22 * Sec. 66. Sections 1 and 34 of this Act take effect July 1, 2005.

THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES



Tadd Owens, Executive Director
Resource Development Council
CSHB160 Testimony
House Finance Com.nittee
March 27, 2003

Thank you, Mr. Chairman. For the record my name is Tadd Owens, I am the executive director of the Resource Development Council. RDC is a private, non-profit, business association representing individuals and companies from Alaska's oil and gas, mining, timber, tourism and fisheries industries. Our membership also includes electric utilities, local communities and Native regional and village corporations. RDC's mission is to help grow Alaska's economy through the responsible development of the state's natural resources.

RDC supports the amended version of House Bill 160 and we ask the House Finance Committee to move the legislation forward. I would like to thank DEC for not only establishing a Work Group to evaluate the department's air permitting program, but also for taking action on that group's recommendations. While RDC did not formally participate in the Air Program Work Group, several of our members did and we endorse their recommendations.

Working in cooperation with the regulated community, DEC has successfully addressed many of the air program's major weaknesses and inefficiencies. HB160 provides DEC with additional flexibility in administering the air program and it simplifies the permitting process for those in the regulated community.

Specifically, this bill accomplishes the following:

- It allows DEC's program to remain consistent with the federal program on a long-term basis
- It differentiates between major and minor source permits and standardizes the requirements for minor permits
- It restructures the program's fee schedule making the costs more transparent and predictable for applicants

In or view, this legislation will result in more efficient review of permits allowing agency staff more time and resources for the field work necessary to protect Alaska's air quality. HB160 also creates a much more user-friendly process for those in the regulated community. The legislation has RDC's strong support.

Thank you for providing me with an opportunity to testify this afternoon.

DEPARTMENT OF ENVIRONMENTAL CONSERVATION
COMMISSIONER BALLARD HB 160 TESTIMONY
HOUSE FINANCE COMMITTEE

Mr. Chairmen and members of the committee, thank you for the opportunity to testify today on behalf of the Governor's air permit reform legislation, HB 160.

Governor Murkowski is committed to enhancing Alaska's economy through resource development. He is equally committed to protecting Alaska's environment. It is not an either/or proposition. A strong economy will generate the revenue base to continue funding our important regulatory programs. Without a strong economy we cannot hope to have a strong government.

Over the last 30 years, we have learned much about the environmental and health hazards associated with air pollution. We have also learned much about emission control technologies, air modeling and protective ambient air standards. Through national and state legislation we have recognized our shared value of environmental protection along with the many other core values that form the framework for government regulatory programs. Environmental protection is not incompatible with resource development. Rather, it is as fundamental a component of resource development as are labor and worker safety laws.

Governor Murkowski and members of his Cabinet recognize that Alaska's laws taken together form the framework for a successful resource development strategy. Environmental laws are one of the many equally important pieces of the public policy mosaic. They are no more, and no less important. This bill will improve the process and function of underlying state policy to protect the environment. It does NOT change the protective standards already in place and administered by the Department through existing regulation.

Through DEC's proposed FY 04 budget we intend to sharpen our focus on our core responsibilities. House Bill 160 is essential to achieving the results promised in our budget proposal. HB 160 achieves permit reform. As you can see – reform requires attention to detail. The bill is long with many reference changes. Reform means re-engineering the way we do business. These proposed changes in law will substantially change the mechanisms of permitting. Moreover, the bill makes way for many more changes that we can accomplish through revised regulations. The ultimate result will be a timely, predictable and rational program that will meet business and development needs without sacrificing air quality.

Our legislative proposal is based on two important developments of the last several years. One was a benchmarking study conducted by the department. We reviewed the funding and workforce allocation in the air programs of states that we consider comparable in workload and complexity to Alaska. Alaska has an unusual air program. Although we have a small population, we have a high number of air permits: as many operating permits as the State of Colorado, and as many major new permits as the state of New Jersey. We discovered in our benchmarking study that we simply have not funded, staffed or organized our program adequately to do the job applicants expect. House Bill 160 and the program increase proposed in the Governor's budget will allow us to remodel our permit program in line with successful programs in other states.

The second development that guided our proposal was the Air Permit Work Group – a stakeholder group convened last year. The Work Group carefully reviewed our program against the federal Clean Air Act and the EPA rules that have been amended several times establishing new programs and

DEPARTMENT OF ENVIRONMENTAL CONSERVATION
COMMISSIONER BALLARD HB 160 TESTIMONY
HOUSE FINANCE COMMITTEE

control concepts. Our state permitting program has not kept pace with the national regime or the needs of Alaskan communities and industry. The Work Group report is in your packets and the work group recommendations are incorporated into HB 160. *(members of group correct)*

Specifically, this bill:

- Creates a predictable, timely and rational permitting program.
- Changes how we regulate minor sources using more standardized permit conditions based on best management practices. Our present "permit by rule" program works for the oil drilling rigs. We want to expand the concept and apply it to more situations. For our population size, we have many more mobile and portable plants and machinery than most states. We need the tools to work with this unusual but essential fleet.
- Exempts sources from permitting to the extent allowed under federal law.
- Streamlines permitting for the major sources in Alaska by matching our procedures to those in federal rules.
- Achieves efficiency through adopting federal rules by reference – this will make it much easier for us to permit rural power plants – we will be able to use the so-called "clean unit test" to avoid a detailed site by site technology analysis.

I want to take some time to explain our zero fiscal note. The bill itself does not warrant a significant increase in staffing. However, reform and streamlining alone will not obtain the desired result. On time permitting in a fast changing resource development climate can only be achieved through a combination of reforming the process and increased staff. Without additional staff, the important changes achieved through the legislation cannot be delivered.

We are asking for an increment in the Governor's FY 2004 Operating Budget to increase staffing for permitting and field functions and to hire contractors to handle fluxes in permitting demands – both critical components to achieving overall success.

The direction in which I am leading the department is based on my commitment to develop sound, understandable standards, spend time in the field and enforce the law when it is necessary to achieve compliance.

I have proposed additional staffing in this program to fulfill my commitment. A well run air permit program is essential to the economic and social well being of our state. I also want you to know that while we are increasing this very important program, we have looked closely at our mission and have reduced our services so that we are only providing those that are essential to our mission of protecting public health and the environment. With this increment as well as several other small increases in core permitting programs the department still has an overall net reduction of 13 positions and \$153,000.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

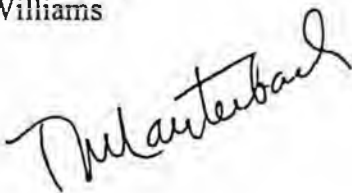
MEMORANDUM

March 27, 2003

SUBJECT: Emission Control Permit Program (CSHB 160(FIN);
draft version "D")

TO: Representative Bill Williams
Attn: Randy

FROM: Terri Lauterbach
Legislative Counsel



Enclosed is a CS for HB 160 with the amendments you requested on Wednesday afternoon.

I have received some input from the Department of Environmental Conservation as to the amendments, as follows:

(1) in "Amendment #2," DEC instructed me to ignore the instruction for page 6, lines 4 - 7;

(2) in "Amendment #3," DEC explained to me that the meaning of "based on . . . taking into account Alaska's unique conditions" is that our monitoring, record keeping, and reporting requirements must satisfy federal requirements but may also include additional requirements that take into account Alaska's unique conditions; therefore, I have drafted AS 46.14.140(a)(2) (bill sec. 15) to read that way;

(3) in "Amendment #6," DEC instructed me to exclude the phrase "as limited by the exemptions listed in" and to use the language "and 40 C.F.R. 60.14"; I express no opinion as to whether drafting the definition in that manner makes a clear definition or not.

Due to a sharp editor's eyes, we have changed references to "sec. 60" that appeared in secs. 61 and 63 so that the reference now reads "sec. 60(a)" (because there are two effective dates for sec. 60 at the end of the bill). However, in order to meet your hearing deadline for today, at your request, neither myself nor the revisor of statutes has attempted to do any of the following:

- (1) check CFR cites in the bill for accuracy;
- (2) check U.S.C. cites in the bill for accuracy;

Representative Bill Williams
March 27, 2003
Page 2

(3) check the Alaska Statutes for any other locations where "facility," "contaminant," and "source" are used and consider whether they should be amended to be consistent with the rest of this bill;

(4) check provisions within the bill to determine if they are consistent with each other;

(5) check the Alaska Statutes to determine if there are any references to the statutes that would be repealed by sec. 60 of this bill that are not dealt with appropriately in the bill;

(6) check the bill and the Alaska Statutes to determine if the renumbering of paragraphs or other provisions would necessitate changes in references to those paragraphs or other provisions that might occur in other statutes not dealt with in the bill; for instance, the sharp editor in our office has noticed that there are references to AS 46.14.140(a)(11) that are now probably wrong because of the renumbering in sec. 15 of this bill, but we have not attempted a correction, pending further instructions on whether and how to do so;

(7) check the language of the bill for clarity or ambiguity;

(8) check the statutory citations (AS cites) for accuracy;

(9) check as to whether the defined terms added by sec. 59 or elsewhere are actually used in the bill or in the Alaska Statutes; or

(10) other legal or substantive "checks."

Since this bill was drafted by persons outside this office, the underlying bill and the amendments requested are new to this office. Given the time of the session and the size and complexity of this bill, I won't be able to get a good enough understanding of the subject matter to give you complete advice, but in two or three days, I could probably accomplish the types of legal checks described above in paragraphs (1)-(3), (5), (6), (8), and (9).

Please note, also, that the extensive use of C.F.R. cites in this bill presents two potential problems: (1) the cites will become meaningless if the office responsible for the Code of Federal Regulations renumbers the regulations in a recodification project or if the Environmental Protection Agency amends the regulations in a manner that makes the cites inaccurate; and (2) the laws may be challenged for excessive delegation of legislative authority to an outside entity because the EPA could change the contents of the cited regulations at any time, thereby changing the meaning of Alaska's laws without the Legislature's prior review. From a legal standpoint, it would be safer to refer, in each place where a C.F.R. cite is used, to the date when the contents match what the legislature intends, e.g. "the April 1, 2003, version of 40 C.F.R. 60.14." Alternatively, the bill could be drafted without C.F.R. cites and just use references to "federal regulations that implement 42 U.S.C. 7401-7671q (Clean Air Act) or "as required by federal regulations."

TML:lmb
03-105.lmb

Enclosure