

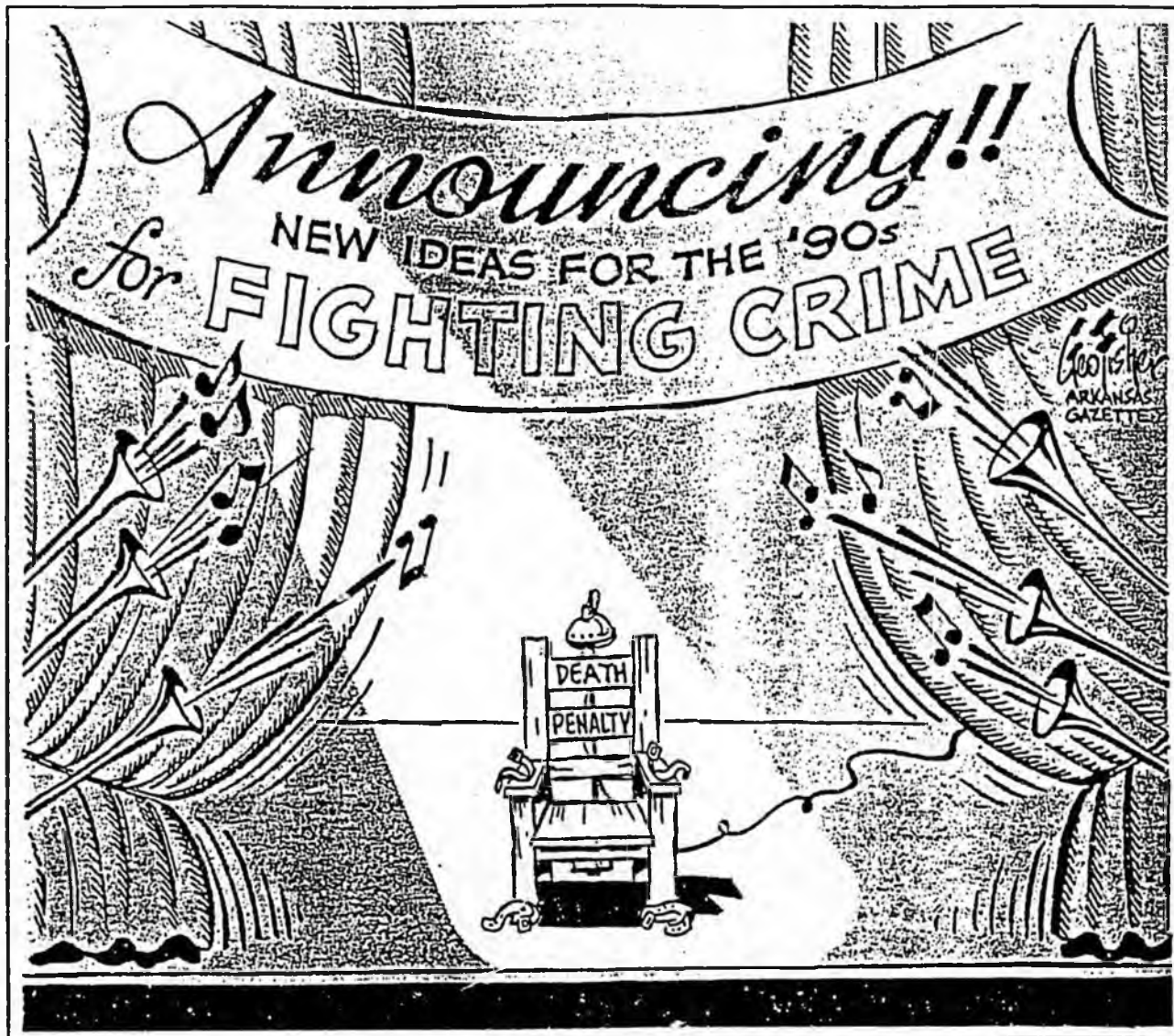
**ALASKA LEGISLATURE**

**HOUSE and SENATE FINANCE COMMITTEE FILES,**

**1993-1994**

**982**

56



Reprinted with permission of the Arkansas Democrat Gazette

centerpiece was an expansion of the federal death penalty to over 40 new crimes. Not to be outdone, the Democrats endorsed a bill allowing the death penalty in over 50 new crimes. Despite two years of debate and attempts to expand the death penalty even further, the bill remains in political gridlock. While the bill's death penalty provisions and restrictions on federal habeas corpus appeals have received the most notice, proposals for law enforcement, prison construction, boot camps

and other crime fighting provisions have received little attention.

Just prior to the last presidential election in 1988, the death penalty was also promoted as a way of appearing tough on drug crime. Legislation was passed imposing the death penalty in drug-related murders but that law has resulted in only seven prosecutions and one death sentence in almost four years. Bush's bill is designed to have a much broader application. However, some parts of the

---

*"What they mean when they say they're 'getting tough' is simply that they are talking tough."*

—Franklin Zimring,  
Earl Warren Legal  
Institute

---

current bill are also window dressing, having little to do with the public's concern about crime.

The crime bill would impose death sentences for such offenses as treason, espionage, murder in the act of destroying a maritime platform, murder of federal egg product inspectors, horse inspectors and poultry inspectors. These proposals will have no real impact on crime in the streets, which is the rationale for proposing such legislation. As one legal commentator put it: "What they mean when they say they're 'getting tough' is simply that they are talking tough."<sup>53</sup>

An expanded federal death penalty could also prove to be enormously expensive. One amendment approved by the Senate would impose the death penalty for murders involving weapons used in interstate commerce. The Congressional Budget Office estimated that this proposal would cost as much as \$600 million over four years.<sup>54</sup>

Senator Thomas Daschle (D.-SD) described much of the talk about the death penalty on Capitol Hill as political posturing: "We debate in codes, like the death penalty as a code for toughness on crime. The whole game is a rush to acquire the code: he who gets the code first wins. . . . It denigrates the national debate."<sup>55</sup>

### **Bill Clinton: Insulating Himself from Attack**

Although Clinton's pro-death penalty stance has partially neutralized Bush's use of this

tactic in the current campaign, or the death penalty one can never be tough enough. For example, Vice President Dan Quayle recently attacked Clinton for being soft on capital punishment (despite having presided over four executions as Arkansas Governor) because Clinton had suggested that Gov. Mario Cuomo (D-NY) might make a good Supreme Court Justice.<sup>56</sup>

Bill Clinton has criticized Bush's manipulation of the death penalty issue: "President Bush has used an expansion of the death penalty as a cover for actually weakening the partnership of the federal government in the fight against crime."<sup>57</sup> However, Clinton bowed to the popular wisdom when he made a prominent demonstration of his support for the death penalty by leaving the primary campaign in January to preside over the execution of a brain damaged defendant in Arkansas.

Ever since he lost the Governor's race in Arkansas after serving only one term, Clinton has made clear his support for the death penalty. Clinton returned to office as Governor in 1983 and has granted no commutations to anyone on death row and has presided over all four of the state's executions in the modern era. However, as Arkansas was returning to executions, its murder rate was increasing: murders in Little Rock, alone, jumped 40 percent in the past year.<sup>58</sup>

## **The Death Penalty in State Politics**

The death penalty is almost the exclusive function of the states rather than the federal government. It is not surprising, then, that some of the most blatant attempts at political manipulation of the death penalty have occurred on the level of state politics.

Florida and Texas are two states with the largest death rows and most active execution chambers. They were also the scene of recent gubernatorial races featuring candidates boasting of their ability to secure more executions than their opponent. In 1990, Florida's Governor Bob Martinez campaigned with background shots of smirking serial killer Ted Bundy, while reminding the voters how many death warrants he had signed. Martinez was defeated by Democrat Lawton Chiles who also favors the death penalty.

### **The Texas Campaign: "Who Can Kill the Most Texans?"**

The governor's race in Texas presented a variety of candidates vying to demonstrate their greater support of the death penalty. As populist Democrat Jim Hightower put it, the race boiled down to one issue: "Who can kill the most Texans?"<sup>59</sup>

Former governor Mark White portrayed his toughness by walking through a display of large photos of the people executed during his term. Attorney General Jim Mattox

insisted that he was the one who should be given credit for the 32 executions carried out under his watch. Meanwhile, the Republican candidate, Clayton Williams showed pictures of a simulated kidnapping of young children from a school yard and then touted his backing of a separate law to impose the death penalty for killing children. His ad ended with the slogan: "That's the way to make Texas great again."<sup>60</sup>

In the end, the campaigns succeeded only in gaining embarrassing notoriety for Texas as Democrat Ann Richards became the eventual winner. Richards has continued Texas' leadership in carrying out the most executions of any state. However, while Texas is spending hundreds of millions of dollars on the death penalty, it is having to release other prisoners early to avoid overcrowding. Inmates serve only an average of one-fifth of their sentences. In Harris County (Houston), arguably the death penalty capital of the country, 67 percent of those arrested are recidivists and crime is the people's number one concern.<sup>61</sup>

### **California Politics: A Case of Neglect**

California's 1990 gubernatorial race also involved jockeying for the position of "death penalty candidate." Dianne Feinstein was the most outspoken, describing herself in commercials as "the only Democratic candidate for governor in favor of the death

penalty."<sup>62</sup> This ploy caused her Democratic rival, John Van de Kamp, to respond with ads assuring the voters that he wouldn't let his conscience get in the way of carrying out executions. Although personally opposed to the death penalty, his ads proclaimed his record as attorney general of putting or keeping almost 300 people on California's death row and featured pictures of the condemned inmates in the background.

Van de Kamp lost to Feinstein and Feinstein then lost to Republican Pete Wilson, another strident pro-death penalty candidate. This year Feinstein is running for the Senate and all 11 of the major candidates for California's two Senate seats support the death penalty.<sup>63</sup>

California is in the throes of an extreme financial crisis. The state paid its workers with IOUs for two months and most social services are facing major cuts. Los Angeles County alone is considering laying off 500 sheriff's deputies to cope with the loss of state funds. Such cuts are likely to have a direct effect on public safety. As one official remarked, "The public doesn't seem to have a heightened sense of urgency about this yet, and I don't think they ever will—until they become victims themselves."<sup>64</sup> Nevertheless, the state has been paying an estimated \$90 million per year over normal costs to carry out the death penalty.<sup>65</sup> With over 300

people condemned to death, California has the second largest death row in the country.

The Los Angeles riots were a stark reminder of the anger which simmers as a result of social neglect. Reforms like community policing were contemplated in L.A. but were viewed skeptically by former Police Chief Daryl Gates because no funds were available: "The first problem," Gates said in his new book, "is the need for more officers. But again, how much more can taxpayers be asked to pay?"<sup>66</sup> As a result, L.A.'s police force was described by one expert as "the antithesis of community policing. The department was cool, aloof, disconnected from the community."<sup>67</sup> The city burned.

### **New York Politics: Grandstanding on the Death Penalty**

New York illustrates that voters are not monolithic when it comes to the death penalty. Although more executions have been carried out in New York since 1900 than in any other state, it does not have the death penalty now and has not executed anyone since 1963. For ten straight years, the state legislature has passed death penalty legislation and for ten years Governor Cuomo has vetoed the bills, continuing the tradition of Governor Hugh Carey before him. Although the majority of New Yorkers appears to support capital punishment, Cuomo has been re-elected

repeatedly. Cuomo's 1990 Republican opponent, Pierre Rinfret, built a campaign around the death penalty but failed to win voter support. Even fellow Republican and death penalty supporter Jack Kemp rejected such blatant manipulation:

"He's running on the death penalty for drug pushers. I mean, goodness gracious, if . . . that's what politics has descended into in the 1990s—who can get to the far right on the death penalty—it is a sad day. . . . I don't want to be in the Republican Party of New York if that's all they can talk about, the death penalty. I am for the death penalty, but that pales in significance to the need for a healthy economic and opportunity-oriented state, whether it is New York or the state of the economy nationally."<sup>68</sup>

The New York legislature has often come close to overriding Cuomo's veto. Lately, however, that movement has been losing steam. The controversy demonstrates that switching one's allegiance on the death penalty issue to join the mainstream is not always a ticket to electoral success. In the 1990 elections, three Assemblymen who once opposed the death penalty, but who had lately switched their votes, were all defeated.<sup>69</sup> As a result, the vote to override Cuomo's veto lost by a larger margin in the next session.

The New York Daily News, long a supporter of the death penalty with such subtle

headlines as FRY HIM!, has apparently become frustrated with the political games-playing surrounding the issue and now rejects the death penalty. In an editorial earlier this year, the News took particular aim at those pro-death penalty politicians who vote against the alternative sentence of life-without-parole because it would make their own death penalty bill harder to pass: "Why won't the Legislature adopt the obvious alternative—life without parole? Because pols would rather grandstand on the death penalty. It is cheap political expedience, not wise public policy."<sup>70</sup>

The death penalty's chief proponent in the New York Assembly, Vincent Graber from Buffalo, acknowledged the kind of manipulation the News criticized. Graber admitted that the life-without-parole bill was rejected because it interfered with the quest for capital punishment: "This being an election year," Graber said in 1990, "I don't think the Senate is in the mood to go with mandatory life, no parole. The death penalty would become less of a campaign issue and I don't think they want to do that."<sup>71</sup>

### Politics in Other Places

Politicians are quick to capitalize on an opportunity to promote the death penalty. Massachusetts does not have the death penalty, but when Carol Stuart, a young white, pregnant woman, was brutally murdered in 1989, the city of Boston reacted in angry shock. The media and

---

*"I don't want to be in the Republican Party of New York if that's all they can talk about, the death penalty. I am for the death penalty, but that pales in significance to the need for a healthy economic and opportunity-oriented state, whether it is New York or the state of the economy nationally."*

—Jack Kemp,  
Secretary of HUD

---

the public were misled to believe that a young black man was the attacker and the Republican Party called a press conference within hours of Stuart's death demanding a return to capital punishment.<sup>72</sup> After the embarrassing truth came out that Stuart was probably murdered by her own husband, the campaign fizzled.

In Arizona, state Representative Leslie Johnson (R-Mesa) called for the death penalty for child molesters after a particularly horrendous crime in Yuma. On the floor of the House, Johnson proposed the quick fix: "If we do away with these people, if we do have the death penalty and if you are a sex offender, you're just out of here — dead, gone. And if we get a few innocent people, fine and dandy with me. I'll take the percentage, folks, because I don't want to put my children at risk anymore."<sup>73</sup>

And in the District of Columbia, Senator Richard Shelby (D-Ala.) proposed that the death penalty be enacted for the city by Congress after one of his aides was killed on Capitol Hill. Congress responded by cutting out the Mayor's \$25 million youth and anti-crime initiative while imposing a referendum on the death penalty. The hidden but inevitable costs resulting from having capital punishment were not addressed in the appropriations bill. But if the experience of other states is any indication, it will be years before any execution is carried out, after

an expenditure of as much as \$100 million, either from federal or DC funds.

Finally, the death penalty is manipulated by those politicians who are closest to it: the elected state attorneys and prosecutors who make the decisions on which cases to pursue the ultimate punishment. A campaign advertisement for district attorney Bob Roberts of North Carolina, for example, lists all the defendants for whom he won a death sentence. His slogan: "If one of your loved ones is murdered, who do you want to try the accused? Bob Roberts with his splendid record and experience or his inexperienced opponent."<sup>74</sup>

As a public defender, attorney general Grant Woods of Arizona had argued before a judge that it would be murder if the judge sentenced his innocent client to death. Now, as chief prosecutor and staunch defender of the death penalty, Woods turned on his client, Murray Hooper, saying he is guilty and deserves the death penalty. Since Hooper is still on death row, such a representation has raised questions of legal ethics and client loyalty. Woods claims he is just doing his job.<sup>75</sup>

A district attorney in Georgia, Joseph Briley, was also charged with numerous breaches of legal ethics in a Supreme Court amicus brief signed by 12 legal ethics professors from around the country. When the conviction of Tony Amadeo was overturned, Briley first announced that he would again

seek the death penalty. However, he later allowed the defendant to plead guilty in exchange for a life sentence after the defense proffered three expert witnesses to testify that his ethical violations should disqualify him from retrying the case. Briley's frustration at having to take the plea was summed up in his comment to one of the defense attorneys: "You've probably made me unelectable."<sup>76</sup>

In Kentucky, Commonwealth Attorney Ernest Jasmin made a name for himself by obtaining a death sentence against the killer of two teenagers from Trinity High School. He then campaigned as the Trinity Prosecutor, taking ads in the high school newspaper and campaigning with one of the victims' parents frequently at his side.<sup>77</sup>

In Nebraska, attorney general Don Stenberg took the unusual step of attaching a personal letter to his Supreme Court brief urging the execution of Harold Otey, whom he described as a "vicious killer" who "still smirks at the family of the victim...."<sup>78</sup> While pushing publicly for Otey's death, Stenberg also sat as one of three decision makers at Otey's clemency hearing and two of his staff presented gruesome details of the murder.

In sum, there has been a steady stream of politicians attempting to capitalize on the death penalty issue in recent years. Real solutions to crime get overshadowed in the tough

talk of capital punishment. When some of these politicians are successful, the death penalty gets implemented or expanded and the people begin to pay the high costs. Somewhere down the road there may be an execution, but the crime rate continues to increase. Politicians do the people a disservice by avoiding the hard economic choices that have to be made between the death penalty and more credible methods of reducing violence.

---

## Conclusion

The death penalty is parading through the streets of America as if it were clothed in the finest robes of criminal justice. Most politicians applaud its finery; others stare in silence, too timid to proclaim that the emperor has no clothes. Instead of confronting the twin crises of the economy and violence, politicians offer the death penalty as if it were a meaningful solution to crime. At the same time, more effective and vital services to the community are being sacrificed. Voters should be told the truth about the death penalty. They should understand that there are programs that do work in reducing crime, but the resources to pay for such programs are being diverted into show executions. Being sensible about crime is not being soft on crime. Too much is at stake to allow political manipulation to silence the truth about the death penalty in America.

## References

- 1 S. Magagnini, *Closing Death Row Would Save State \$90 Million a Year*, The Sacramento Bee, March 28, 1988, at 1.
- 2 Kansas Legislative Research Department study, cited in D. Von Drehle, *Bottom Line: Life in Prison One-sixth as Expensive*, The Miami Herald, July 10, 1988, at 12A.
- 3 C. Hoppe, *Executions Cost Texas Millions*, The Dallas Morning News, March 8, 1992, at 1A.
- 4 D. Von Drehle, *Bottom Line: Life in Prison One-sixth as Expensive*, The Miami Herald, July 10, 1988, at 12A.
- 5 Magagnini, see note 1.
- 6 The New York Department of Correctional Services study cited in Moran & Ellis, *Death Penalty: Luxury Item*, New York Newsday, June 14, 1989, at 60; see also the Massachusetts Bar Association Section News, *The Dollar and Human Costs of the Death Penalty*, April 1992, at 5.
- 7 *Funding the Justice System: A Call to Action*, A report by the American Bar Association, August, 1992, at ii, 3 (emphasis in original) (hereinafter, *ABA Study*).
- 8 *Id.* at 16.
- 9 M. Garey, *The Cost of Taking A Life: Dollars and Sense of the Death Penalty*, 18 University of California Davis Law Review 1221, 1261 (1985).
- 10 *ABA Study*, see note 7, at 21.
- 11 Von Drehle, see note 4.
- 12 *Id.*
- 13 Moran & Ellis, see note 6, at 62
- 14 *ABA Study*, see note 7, Table: *Indicators of a National Problem: 1991*, at ii-iii.
- 15 *Id.*, Attachment, at 54.
- 16 L. Bienen, *No Savings in Lives or Money with Death Penalty*, The New York Times, August 7, 1988; see also D. Grothaus, *Death, Dollars and Scales of Justice*, The Houston Post, December 7, 1986 at 3B (Harris County, with almost half of the state's capital cases, spent \$86.3 million since 1980).
- 17 *ABA Study*, see note 7, at 18.
- 18 *Id.*, Attachment, at 18.
- 19 Testimony of Carole Carpenter on behalf of the National Association of Counties before the U.S. Senate Subcommittee on Juvenile Justice, April 29, 1992, at 7.
- 20 Harshbarger, *Statement on Reinstating the Death Penalty in the Commonwealth*, Massachusetts Bar Association, see note 6, at 3.
- 21 Tabak & Lane, *Judicial Activism and Legislative "Reform" of Federal Habeas Corpus: A Critical Analysis of Recent Developments and Current Proposals*, 55 Albany Law Review 1, 31(1991).
- 22 Magagnini, see note 1.
- 23 Magagnini, *Sierra County Robs Police to Pay Lawyers*, The Sacramento Bee, March 28, 1988.
- 24 Phone conversation, September 15, 1992.
- 25 See Magagnini, note 2; see also Corenevsky v. Superior Court of Imperial County, 682 P.2d 360 (Calif. 1984).
- 26 *Commissioners Jailed Over Fees*, American Bar Association Journal, February, 1992.
- 27 *Lincoln Commissioners Pick Jail Over Legal Fees*, The Atlanta Constitution, Oct. 24, 1991.
- 28 K. Wood, *Can State Afford Fourth Prosecution of Spraggins?*, Fulton County Daily Report, March 3, 1988, at 1.

- 29 *Maxwell Murder Trial May Up Kemper Taxes*, The Meridian Star (Mississippi), July 21, 1992; phone conversation with Michael Luke, September 11, 1992.
- 30 *Public Defender System Needed*, The Yazoo Herald, July 6, 1991.
- 31 Hoppe, The Dallas Morning News, see note 3.
- 32 *Id.*
- 33 J. Painter, *Death Penalty Seen as Too Costly for Oregon's Pocketbook*, The Oregonian (Portland), July 27, 1987.
- 34 Kansas, for example, estimated that the annual cost for implementing the death penalty would be \$11.4 million, of which \$9.2 million would be for trial costs. Kansas Legislative Research Dept. Memorandum, Feb. 11, 1987. New York estimated a cost of \$1.8 million per case, through the first level of appeals, of which \$1.5 million would be trial costs. *Capital Losses: The Price of The Death Penalty for New York State*, NY State Defenders Association, Albany, 1982.
- 35 Magagnini, see note 1.
- 36 M. Hansen, *Politics and the Death Penalty*, The Palm Beach Review's Florida Supreme Court Report, Feb. 25, 1991, at 10B, 26B.
- 37 D. Kaplan, *Death Mill, USA*, The National Law Journal, May 9, 1989, at 40.
- 38 See *Capital Losses*, note 34.
- 39 U.S. Dept. of Justice, Uniform Crime Report, preliminary annual release, April 26, 1992; see also Richmond-Times Dispatch, April 27, 1992 for chart of 25 cities based on the Uniform Crime Report.
- 40 G. James, *In Every Category, Crime Reports Fell Last Year in New York City*, The New York Times, March 26, 1992, at A1.
- 41 The New York Times, Aug. 4, 1992, chart at B2.
- 42 C. Wolff, *Brown Legacy: Community Policing*, The New York Times, Aug. 4, 1992, at B2.
- 43 E. Meyer, *Policing With People in Mind*, The Washington Post, June 15, 1992, at A1, 8.
- 44 T. Squitieri, *Murder Rate is Up in Usually Slow First Quarter*, USA Today, April 3, 1992, at 8A.
- 45 National Association of Chiefs of Police, 4th National Poll, 1991.
- 46 K. Cullen, *Death Penalty Criticized by County Prosecutors*, The Boston Globe, Jan. 26, 1992.
- 47 S. Harshbarger, see note 20.
- 48 *Death, Life and the Presidency*, The New York Times, January 25, 1992.
- 49 J. Kennedy, *Why Houston Leads in Death Row Cases*, The Los Angeles Times, July 2, 1992 (Washington edition).
- 50 See note 39.
- 51 *Republican Leaders Praise Atwater After Memo Flap*, The Courier-Journal (Louisville, KY), June 17, 1989.
- 52 M. Wines, *Bad Economic News Forces Bush to Refocus Re-election Strategy*, The New York Times, July 4, 1992, at A1.
- 53 D. Von Drehle, *A Broader Federal Death Penalty: Prelude to Bloodbath or Paper Tiger?*, The Washington Post, November 29, 1991, at A29, quoting Franklin Zimring, director of the Earl Warren Legal Institute.
- 54 Letter from Robert D. Reischauer, Director of the Congressional Budget Office to Charles E. Schumer, Chairman of the House Subcommittee on Crime and Criminal Justice, September 20, 1991.

- 55 H. Dewar, *On Capitol Hill, Symbols Triumph*, The Washington Post, November 26, 1991 at A1.
- 56 K. Sack, *Arkansan Portrayed As Soft*, The New York Times, August 25, 1992, at A18.
- 57 E. Dionne, *Clinton Charges Bush With Inaction on Crime*, The Washington Post, February 22, 1992.
- 58 See note 39.
- 59 S. Grady, *Savagery of Bush-Duakis Race Lingers*, The Albuquerque Journal, March 14, 1990.
- 60 S. Attlesey, *GOP Launches New Ad Attack Against Richards*, The Dallas Morning News, September 29, 1990.
- 61 C. Pesce, *Houston Fears It's Being 'Eaten Up By Crime'*, USA Today, October 21, 1991.
- 62 M. Oreskes, *The Political Stampede on Execution*, The New York Times, April 4, 1990, at A16.
- 63 L. Mecoy & H. Sample, *Candidates Waffle on Execution*, The San Francisco Daily Journal, April 21, 1992, at 7.
- 64 J. Miller, *Counties Brace for Cuts in Police and Other Services*, The Los Angeles Times, September 1, 1992 (Wash. edit.), quoting Grover Trask, Riverside County District Attorney.
- 65 See Magagnini, note 2.
- 66 D. Gates, *Chief: My Life in the LAPD* (1992), quoted in Newsweek, May 11, 1992, at 39.
- 67 *Blacks and Cops: Up Against the Wall*, Newsweek, May 11, 1992, at 52-3, quoting Wesley Skogan of Northwestern University.
- 68 G. Ifill, *Kemp Attacks GOP Challenger to Cuomo*, The Washington Post, June 7, 1990.
- 69 *A Welcome Defeat for Death*, The New York Times, November 14, 1990 (editorial) at A28.
- 70 *Instead of Death Penalty, Life Without Parole*, The New York Daily News, May 20, 1992, at 34.
- 71 M. Humbert, *Annual Death Penalty Battle Resumes in NYS*, The Cortland Standard, February 5, 1990, at 11.
- 72 *Black Leaders Demand that Flynn Apologize*, The Boston Globe, January 5, 1990.
- 73 B. Medlyn, *Arizona Child Crime Laws Among Toughest, Officials Say*, The Phoenix Gazette, July 9, 1988, at B12.
- 74 The Salisbury Post, May 5, 1990 (advertisement).
- 75 P. Manson, *Woods Fought Death Penalty as a Lawyer, Now Backs It*, The Arizona Republic, March 17, 1992.
- 76 K. Wood, *Plea Deal Lets DA Avert Abashment*, Fulton County Daily Report, October 22, 1990.
- 77 See C. Willis, *Lawyers Accuse Jasmin of Prosecuting Case for 'Political Gain'*, The Courier-Journal (Louisville, KY), Feb. 25, 1992, at B1.
- 78 Letter from Stenberg to the Chief Deputy Clerk of the U.S. Supreme Court, August 4, 1992.

**HIB**

**167**

**HFIN**

**FILE**

# HOUSE COMMITTEE REPORT

(11)

Date Referred: April 7, 1993

FURTHER REFERRALS:

Date of Committee Action: 4/20/93

The FINANCE Committee considered:  
HOUSE BILL NO. 167

HB 167

AIR QUALITY CONTROL PROGRAM

"An Act relating to air quality control and the prevention, abatement, and control of air pollution; relating to civil and criminal penalties, damages, and other remedies for air quality control violations; clarifying the definition of 'hazardous substance' to include releases and threatened releases to the atmosphere; amending the lien provisions relating to the oil and hazardous substance release response fund; relating to inspection and enforcement powers of the Department of Environmental Conservation; and providing for an effective date."

**RECOMMENDATIONS:**

be replaced with CSHB 167 (FIN)  the same title  a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

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

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

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal impact DEC, LAW

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

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

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

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<u>Eileen P. Maclean</u> <small>MACLEAN</small>	<input checked="" type="checkbox"/>				
<u>Donald J. Larson</u> <small>LARSON</small>	<input checked="" type="checkbox"/>	<u>Don Hoffman</u> <small>Hoffman</small>		<input checked="" type="checkbox"/>	
<u>Terry Martin</u> <small>MARTIN</small>	<input checked="" type="checkbox"/>	<u>Mike Navate</u> <small>NAVATE</small>		<input checked="" type="checkbox"/>	
<u>Scott P. Farrell</u> <small>Farrell</small>	<input checked="" type="checkbox"/>	<u>Ray Brown</u> <small>Brown</small>		<input checked="" type="checkbox"/>	
<u>Mark Stanley</u> <small>HANLEY</small>	<input checked="" type="checkbox"/>				
<u>James Grussendorf</u> <small>Grussendorf</small>	<input checked="" type="checkbox"/>				
<u>Richard Foster</u> <small>Foster</small>	<input checked="" type="checkbox"/>				

Richard P. Maclean  
CHAIRMAN'S SIGNATURE

# FISCAL NOTE

STATE OF ALASKA

BILL NO. CS HB 167 (FIN)

Revision Date: 19-Apr-93  
 Title: Alaska Air Permit Statutes  
 Sponsor: Representative Mark Hanley  
 Requestor: House Finance Committee

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

COMPONENT SERIAL NO. 1428

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 94(Note 1)	FY 95(Note 2)	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	(707.1) 259.7	3,125.2	3,125.2	3,125.2	3,083.1	3,083.1
TRAVEL	(103.4) 48.0	284.6	287.9	291.2	334.2	334.2
CONTRACTUAL	(182.6) 135.1	106.8	495.1	726.5	259.6	259.6
SUPPLIES	(50.5) 0.0	73.7	75.4	77.2	65.8	65.8
EQUIPMENT	(50.7) 0.0	156.8	0.0	0.0	0.0	0.0
LAND&STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL OPERATING</b>	<b>(1094.3) 442.8</b>	<b>3747.1</b>	<b>3983.6</b>	<b>4220.1</b>	<b>3742.7</b>	<b>3742.7</b>

<b>CAPITAL</b>						
----------------	--	--	--	--	--	--

<b>REVENUE</b>						
<b>FUND SOURCE: 1005</b>	<b>(1094.3) 442.8</b>	<b>3747.1</b>	<b>3983.6</b>	<b>4220.1</b>	<b>3742.6</b>	<b>3742.6</b>

FUNDING:

1002 FEDERAL RECEIPTS						
1003 GF MATCH						
1004 GF						
1005 GF/PROGRAM RECPT	(1094.3) 442.8	3747.1	3983.6	4220.1	3742.7	3742.7
1006 GF/MHTIA						
OTHER						
<b>TOTAL</b>	<b>(1094.3) 442.8</b>	<b>3747.1</b>	<b>3983.6</b>	<b>4220.1</b>	<b>3742.7</b>	<b>3742.7</b>

POSITIONS:

FULL-TIME (Note 3)	4.0	22.4	22.4	22.4	21.7	21.7
PART-TIME						
TEMPORARY						

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

ANALYSIS: (See attachment)
Note 1: Indicates FY 94 funding authorization required above legislative approved FY 94 operating budget to implement this Act. Values in ( ) indicate permit program cost increases relative to FY 93 budget.
Note 2: For FY 95 and beyond, federal law requires the permit program be 100% funded by program receipts.
Note 3: Indicates net increase in positions relative to authorized FY 94 operating budget.

Prepared by: Leonard D. Verrelli, Chief  
Environmental Quality, Air Quality Management

Phone: 465-5100  
 Date: 4/19/93

Approved by Commissioner: Janice Adair, Assistant Commissioner  
 Agency: Department of Environmental Conservation

Date: 4-19-93

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

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

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

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

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

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

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

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

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

1993 AIR BILL FISCAL NOTE BACK-UP

FY 93 TOTAL PERMIT PROGRAM COSTS

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

FY 93 TOTAL 1922.3

FY 95 TOTAL PERMIT PROGRAM COSTS

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

FY 95 TOTAL 3747.1

FY 96 TOTAL PERMIT PROGRAM COSTS

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

FY 96 TOTAL 3983.6

1993 AIR BILL FISCAL NOTE BACK-UP

FY 97 TOTAL PERMIT PROGRAM COSTS

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

FY 97 TOTAL 4220.1

FY 98 TOTAL PERMIT PROGRAM COSTS

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

FY 98 TOTAL 3742.6

FY 99 TOTAL PERMIT PROGRAM COSTS

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

FY 99 TOTAL 3742.6

Position Title Environmental Engineering Associate		No. of Positions 11	Range / Step 18A	Barg. Unit GG
Time Status Full Time	Staff Months 132	Location Various		Election District Various
<b>TYPE OF EXPENDITURE</b>		Amount	Justification  The new Clean Air Act of 1990 requires all states to establish a completely new operating permit program which takes into account small sources never permitted before, includes greater public participation in the permit process, and requires the collection of fees to completely offset all costs for the review, issuance, and maintenance of the permit program. The Act also requires states to establish a Small Business Assistance Program which aids small businesses in permit process, provides technical and compliance assistance, and provides information about pollution prevention methods.  The Environmental Engineering Associate will assist senior staff to: 1. develop revised regulations and procedures, recognizing small business concerns; 2. develop standardized permit applications; 3. identify and assist new permittees; 4. provide assistance and information to permit applicants; 5. review permit applications; 6. prepare draft permits; 7. develop the small business and pollution prevention programs; 8. train regional and district permit liaisons; 9. conduct inspections and compliance certifications; and 10. establish a quality control/quality assurance audit program.	
Salary		\$461.9		
Benefits		\$181.2		
Premium Pay		\$0.0		
Other	19% Administrative	\$122.2		
Total Personal Services		\$765.3		
Travel	\$ 4,150 / FTE	\$45.8		
Contractual *	\$ 6,000 / FTE	(\$16.0)		
Commodities	\$ 1,500 / FTE	\$16.5		
Equipment	\$ 7,000 / FTE	\$77.0		
Other				
Total Cost		\$888.6		
<b>FUNDING SOURCE FOR TOTAL COST</b>				
Federal Receipts	1002			
G.F. Match	1003			
General Fund	1004			
I-A Receipts	1007			
CIP Receipts	1061			
Other	Program Receipts	\$888.6		
* EPA IPA position shifted from contractual to salary line item				

AGENCY Environmental Conservation

FY 95

Page 1 of 9

BRU Environmental Quality

COMPONENT Air Quality Management

Revised Date: 2/1/93

**Request For  
New Position**

Position Title Environmental Engineer II		No. of Positions 3	Range / Step 20A	Barg. Unit GG
Time Status Full Time	Staff Months 36	Location Various		Election District Various
<b>TYPE OF EXPENDITURE</b>		Amount	Justification  The new Clean Air Act of 1990 requires all states to establish a completely new operating permit program which takes into account small sources never permitted before, includes greater public participation in the permit process, and requires the collection of fees to completely offset all costs for the review, issuance, and maintenance of the permit program. The Act also requires states to establish a Small Business Assistance Program which aids small businesses in permit process, provides technical and compliance assistance, and provides information about pollution prevention methods.  The Environmental Engineer II will: 1. supervise and evaluate the activities of the permitting and compliance assurance staff; 2. develop and implement procedures to accomplish permitting and compliance assurance tasks; 3. review the technical and economic feasibility of methods to maintain the ambient air quality standards; 4. provide statewide technical support to other agencies and the private sector; 5. make presentations on the status of compliance efforts; 6. make recommendations for changes to department policy, procedures and regulations; 7. assure uniform implementation of State and Federal air quality regulations.	
Salary		\$144.2		
Benefits		\$54.3		
Premium Pay		\$0.0		
Other	19% Administrative	\$37.7		
Total Personal Services		\$236.2		
Travel	\$ 4,000 / FTE	\$12.0		
Contractual	\$ 6,000 / FTE	\$18.0		
Commodities	\$ 1,500 / FTE	\$4.5		
Equipment	\$ 7,000 / FTE	\$21.0		
Other				
Total Cost		\$291.7		
<b>FUNDING SOURCE FOR TOTAL COST</b>				
Federal Receipts	1002			
G.F. Match	1003			
General Fund	1004			
I-A Receipts	1007			
CIP Receipts	1001			
Other	Program Receipts	\$291.7		

AGENCY Environmental Conservation

FY 95

Page 2 of 9

BRU Environmental Quality

COMPONENT Air Quality Management

Revised Date: 2/1/93

**Request For  
New Position**

Position Title Environmental Manager I (Small Business Advocate)		No. of Positions 1	Range / Step 20A	Barg. Unit Supervisory
Time Status Full Time	Staff Months 12	Location Anchorage		Election District Anchorage
<b>TYPE OF EXPENDITURE</b>		Amount	Justification:  The new Clean Air Act of 1990 requires all states to establish a completely new operating permit program which takes into account small sources never permitted before, includes greater public participation in the permit process, and requires the collection of fees to completely offset all costs for the review, issuance, and maintenance of the permit program. The Act also requires states to establish a Small Business Assistance Program which aids small businesses in permit process, provides technical and compliance assistance, and provides information about pollution prevention methods.  The Environmental Manager I (Small Business Advocate) will: 1. develop revised regulations, recognizing small business concerns; 2. identify and assist small business permittees; 3. develop standardized permit applications; 4. prepare pollution prevention assistance programs; 5. provide assistance and information to permit applicants; 6. supervise the small business program; 7. train regional and district small business liaisons; and 8. report to the Small Business Compliance Advisory Panel.	
Salary		\$48.4		
Benefits		\$18.1		
Premium Pay		\$0.0		
Other	19% Administrative	\$12.6		
Total Personal Services		\$79.1		
Travel		\$40.3		
Contractual	\$ 6,000 / FTE	\$6.0		
Commodities	\$ 1,500 / FTE	\$1.5		
Equipment	\$ 7,000 / FTE	\$7.0		
Other	Compliance Advisory Panel Costs	\$25.4		
Total Cost		\$159.3		
<b>FUNDING SOURCE FOR TOTAL COST</b>				
Federal Receipts	1002			
G.F. Match	1003			
General Fund	1004			
I-A Receipts	1007			
CIP Receipts	1061			
Other	Program Receipts	\$159.3		

AGENCY Environmental Conservation

FY 95

Page 3 of 9

BRU Environmental Quality

COMPONENT Air Quality Management

Revised Date: 2/1/93

**Request For  
New Position**

Position Title <b>Attorney III</b>		No. of Positions 1	Range / Step 22A	Barg. Unit Partially Exempt
Time Status Full Time	Staff Months 6	Location Juneau		Election District Juneau
<b>TYPE OF EXPENDITURE</b>		Amount	Justification  The new Clean Air Act of 1990 requires all states to establish a completely new operating permit program which takes into account small sources never permitted before, includes greater public participation in the permit process, and requires the collection of fees to completely offset all costs for the review, issuance, and maintenance of the permit program. The Act also requires states to establish a Small Business Assistance Program which aids small businesses in permit process, provides technical and compliance assistance, and provides information about pollution prevention methods.  The Attorney III will: 1. issue opinions to interpret and apply legislation, regulations or other legal instruments; 2. draft enabling statutory authority; 3. perform comprehensive studies of legal questions where development of all background material is required; 4. advise and assist state agencies in conducting hearings and conferences and in preparing findings of fact, conclusions of law and decisions; 5. provide assistance to program staff on statutory procedures; 6. review State Implementation Plan revisions prior to submission to USEPA; and 7. review regulations prior to submission to Department of Law.	
Salary		\$26.7		
Benefits		\$9.7		
Premium Pay		\$0.0		
Other 19% Administrative		\$6.9		
Total Personal Services		\$43.3		
Travel \$ 4,000 / FTE		\$2.0		
Contractual \$ 6,000 / FTE		\$3.0		
Commodities \$ 1,500 / FTE		\$0.8		
Equipment \$ 7,000 / FTE		\$3.5		
Other				
Total Cost		\$52.6		
<b>FUNDING SOURCE FOR TOTAL COST</b>				
Federal Receipts	1002			
G.F. Match	1003			
General Fund	1004			
I-A Receipts	1007			
CIP Receipts	1061			
Other Program Receipts		\$52.6		

AGENCY Environmental Conservation

FY **95**

Page 4 of 9

BRU Environmental Quality

COMPONENT Air Quality Management

Revised Date: 2/1/93

**Request For  
New Position**

Position Title <b>Analyst Programmer III</b>		No. of Positions <b>1</b>	Range / Step <b>17A</b>	Barg. Unit <b>GG</b>
Time Status <b>Full Time</b>	Staff Months <b>11</b>	Location <b>Juneau</b>		Election District <b>Juneau</b>
<b>TYPE OF EXPENDITURE</b>		Amount	Justification  The new Clean Air Act of 1990 requires all states to establish a completely new operating permit program which takes into account small sources never permitted before, includes greater public participation in the permit process, and requires the collection of fees to completely offset all costs for the review, issuance, and maintenance of the permit program. The Act also requires states to establish a Small Business Assistance Program which aids small businesses in permit process, provides technical and compliance assistance, and provides information about pollution prevention methods.  The Analyst Programmer III will: 1. develop and maintain the air permit database system; 2. develop and maintain a permit fee analysis and collection system; 3. perform the duties of the LAN administrator, including routine system backups; 4. write general instructions for using network programs; 5. guide and advise less-informed colleagues on an informal basis in the use of programming languages and data processing techniques; 6. research and respond to complaints regarding the permit application system; and 7. train users in the use and application of user friendly data processing systems.	
Salary		\$35.1		
Benefits		\$14.1		
Premium Pay		\$0.0		
Other <b>19% Administrative</b>		\$9.3		
<b>Total: Personal Services</b>		\$58.5		
Travel		\$0.0		
Contractual <b>\$ 6,000 / FTE</b>		\$5.5		
Commodities <b>\$ 1,500 / FTE</b>		\$1.4		
Equipment <b>\$ 7,000 / FTE</b>		\$6.3		
Other				
<b>Total Cost</b>		\$71.7		
<b>FUNDING SOURCE FOR TOTAL COST</b>				
Federal Receipts	1002			
G.F. Match	1003			
General Fund	1004			
I-A Receipts	1007			
CIP Receipts	1061			
Other <b>Program Receipts</b>		\$71.7		

AGENCY Environmental Conservation

BRU Environmental Quality

COMPONENT Air Quality Management

**FY 95**

Page 5 of 9

Revised Date: 2/1/93

**Request For  
New Position**

Position Title Paralegal Assistant II		No. of Positions 1	Range / Step 16A	Barg. Unit GG
Time Status Full Time	Staff Months 11	Location Juneau		Election District Juneau
<b>TYPE OF EXPENDITURE</b>		Amount	<b>Justification</b>  The new Clean Air Act of 1990 requires all states to establish a completely new operating permit program which takes into account small sources never permitted before, includes greater public participation in the permit process, and requires the collection of fees to completely offset all costs for the review, issuance, and maintenance of the permit program. The Act also requires states to establish a Small Business Assistance Program which aids small businesses in permit process, provides technical and compliance assistance, and provides information about pollution prevention methods.  The Paralegal Assistant II will: 1. assist in drafting enabling statutory authority; 2. assist in developing comprehensive and understandable regulations; 3. draft procedures for public participation in the permit process; 4. prepare draft regulations for pollution prevention; 5. provide assistance to program staff on regulatory procedures; 6. assist in developing the State Implementation Plan; 7. prepare program authority certifications to USEPA; 8. develop enhanced administrative review procedures; and 9. coordinate with established judicial review procedures.	
Salary		\$32.8		
Benefits		\$13.5		
Premium Pay		\$0.0		
Other	19% Administrative	\$8.8		
Total Personal Services		\$55.1		
Travel	\$ 4,000 / FTE	\$3.6		
Contractual	\$ 6,000 / FTE	\$5.5		
Commodities	\$ 1,500 / FTE	\$1.4		
Equipment	\$ 7,000 / FTE	\$6.3		
Other				
Total Cost		\$71.9		
<b>FUNDING SOURCE FOR TOTAL COST</b>				
Federal Receipts	1002			
G.F. Match	1003			
General Fund	1004			
I-A Receipts	1007			
CIP Receipts	1061			
Other	Program Receipts	\$71.9		

AGENCY Environmental Conservation

BRU Environmental Quality

COMPONENT Air Quality Management

**FY 95**

Page 6 of 9

Revised Date: 2/1/93

**Request For  
New Position**

Position Title <b>Administrative Assistant II</b>			No. of Positions <b>1</b>	Range / Step <b>14A</b>	Barg. Unit <b>GG</b>
Time Status <b>Full Time</b>	Staff Months <b>10</b>		Location <b>Juneau</b>	Election District <b>Juneau</b>	
<b>TYPE OF EXPENDITURE</b>			Amount	Justification  The new Clean Air Act of 1990 requires all states to establish a completely new operating permit program which takes into account small sources never permitted before, includes greater public participation in the permit process, and requires the collection of fees to completely offset all costs for the review, issuance, and maintenance of the permit program. The Act also requires states to establish a Small Business Assistance Program which aids small businesses in permit process, provides technical and compliance assistance, and provides information about pollution prevention methods.  The Administrative Assistant II will: 1. provide assistance and information to permit applicants; 2. issue standardized permit applications; 3. supervise procedures to track permit applications and fees; 4. implement reporting and auditing procedures; 5. supervise and audit permit documentation procedures; 6. assure uniform accounting procedures for permit fees; 7. coordinate program support functions; and 8. provide standardized managerial summaries of program activity.	
Salary		\$25.4			
Benefits		\$11.0			
Premium Pay		\$0.0			
Other	19% Administrative	\$6.9			
Total Personal Services		\$43.3			
Travel		\$0.0			
Contractual	\$ 6,000 / FTE	\$5.0			
Commodities	\$ 1,500 / FTE	\$1.3			
Equipment	\$ 7,000 / FTE	\$5.6			
Other					
Total Cost		\$55.2			
<b>FUNDING SOURCE FOR TOTAL COST</b>					
Federal Receipts	1002				
G.F. Match	1003				
General Fund	1004				
IA Receipts	1007				
CIP Receipts	1061				
Other	Program Receipts	\$55.2			

AGENCY Environmental Conservation

**FY 95**

Page 7 of 9

BRU Environmental Quality

COMPONENT Air Quality Management

Revised Date: 2/1/93

**Request For  
New Position**



Position Title Clerk Typist III		No. of Positions 3.5	Range / Step 08A	Barg. Unit GG
Time Status Full Time*	Staff Months 41	Location Various	Election District Various	
<b>TYPE OF EXPENDITURE</b>		Amount	Justification  The new Clean Air Act of 1990 requires all states to establish a completely new operating permit program which takes into account small sources never permitted before, includes greater public participation in the permit process, and requires the collection of fees to completely offset all costs for the review, issuance, and maintenance of the permit program. The Act also requires states to establish a Small Business Assistance Program which aids small businesses in permit process, provides technical and compliance assistance, and provides information about pollution prevention methods.  The Clerk Typist III will assist senior staff to: 1. prepare information packets for permittees; 2. provide assistance and information to permit applicants; 3. operate small businesses and pollution prevention hotlines; 4. issue and receive standardized permit applications; 5. develop procedures to track permit applications; 6. prepare permit documentation and correspondence; 7. develop correspondence tracking systems; and 8. develop and maintain application and permit files.	
Salary		\$74.8		
Benefits		\$37.8		
Premium Pay		\$0.0		
Other 15% Administrative		\$21.4		
Total Personal Services		\$134.0		
Travel		\$0.0		
Contractual \$ 6,000 / FTE		\$20.5		
Commodities \$ 1,500 / FTE		\$5.1		
Equipment \$ 7,000 / FTE		\$23.8		
Other				
Total Cost		\$183.4		
<b>FUNDING SOURCE FOR TOTAL COST</b>				
Federal Receipts	1002			
G.F. Match	1003			
General Fund	1004			
IA Receipts	1007			
CIP Receipts	1061			
Other Program Receipts		\$183.4		
* 3 Full Time 1 Half Time				

AGENCY Environmental Conservation

BRU Environmental Quality

COMPONENT Air Quality Management

FY 95

Page 9 of 9

Revised Date: 2/1/93

**Request For  
New Position**

FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

BILL NO. CSHB 167 (JUD)

Revision Date: April 15, 1993  
Title: "An Act relating to air quality, and the prevention, abatement, and control of air pollution..."  
Sponsor: Representative Hanley  
Requestor: Governor's Office/OMB

Department Affected: Law  
BRU: Legal Services  
Component: Operations  
COMPONENT SERIAL NO. 0093

EXPENDITURES/REVENUES:

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND &						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	xxxxx	xxxxx	xxxxx	xxxxx	xxxxx	xxxxx

CAPITAL						
---------	--	--	--	--	--	--

REVENUE FUND SOURCE:						
----------------------	--	--	--	--	--	--

FUNDING:

1002 Federal						
1003 GF Match						
1004 GF						
1005 GF/Program						
1006 GF/MHTIA						
OTHER						
TOTAL	xxxxx	xxxxx	xxxxx	xxxxx	xxxxx	xxxxx

POSITIONS:

FULL-TIME	xxxxx	xxxxx	xxxxx	xxxxx	xxxxx	xxxxx
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: \_\_\_\_\_

ANALYSIS: (Attach a separate page if necessary.)

Please see attached analysis.

Prepared by: Richard I. Peques, Director  
Division: Administrative Services Division  
Approved by Commissioner: Charles E. Cole, Attorney General  
Agency: Department of Law

Phone: 465-3672  
Date: April 15, 1993  
Date: April 15, 1993

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE  
For further distribution information call the Governor's Legislative Office

FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

BILL NO. CSHB 167 (JUD)

ANALYSIS: (continued)

This bill amends AS 46 by adding a new chapter that would establish a comprehensive state regulatory program to prevent, abate, control, and identify air pollution that complies with the Clean Air Act. The bill makes numerous changes in state law, which are designed to allow the state to continue to have primary management of air quality in the state and to retain federal approval of the state's air quality control program. The bill would provide authority to the Department of Environmental Conservation to regulate emissions or contaminants not currently regulated in federal law, and the bill would provide specific authority to require a permit for a facility or source not regulated in federal law.

The Department of Law is concerned about provisions in Section 2 that set the standards for the adoption of emission control regulations, in proposed AS 46.14.010 and AS 46.14.015, which could cause a significant undetermined cost for our department. Specifically, the bill requires that before adopting air quality control regulations, the Department of Environmental Conservation shall demonstrate that the proposed standard or emission limitation is technologically and economically feasible. This requires that the Department of Environmental Conservation provide written findings that regulations proposed to be adopted are necessary to protect human health and the environment and that the proposed standard or emission limitation meets the feasibility requirement. Normally, state regulations are adopted based on the standard set forth in AS 44.62.030, which requires that a regulation be consistent with a statute and reasonably necessary to carry out the purposes of the statute.

Because of the bill's higher standard for the adoption of regulations, the department believes that considerable attorney time will be required to help the Department of Environmental Conservation develop the facts and findings that will be necessary each time a regulation is adopted. Furthermore, because regulations adopted under this higher standard can be site and emission specific to a particular permit, there is a high potential for litigation challenging regulations and permits adopted under the new standards. Consequently, the Department of Law's cost for defending air quality regulations adopted in accordance with these provisions could be equally high. At this time, we cannot accurately predict what these costs will be without knowing the specifics of regulations that may be adopted under the bill. However, there could be a significant additional cost for the Department of Law in the future.

# DIVISION OF LEGAL SERVICES

## LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

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

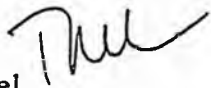
130 Seward Street, Suite 409  
Juneau, Alaska 99801-2105

### MEMORANDUM

April 13, 1993

**SUBJECT:** Standing to Obtain Review of Air Quality Permit Actions  
(CSHB 167(JUD))

**TO:** Representative Kay Brown

**FROM:** Terri Lauterbach   
Legislative Counsel

You have asked me to review AS 46.14.200, which would be enacted by CSHB 167(JUD), to determine if the standing requirement in that section would satisfy the requirements of the federal Clean Air Act. You have also asked me to review a memorandum on this subject by Robert Reges, an assistant attorney general.

In my opinion, AS 46.14.200 probably does not comply with the federal law, and nothing in Mr. Reges' memorandum dissuades me from that view. To ensure compliance with the federal Clean Air Act, I recommend deletion of the words "private" and "substantive" from AS 46.14.200.

### DISCUSSION

Reges and I agree that AS 46.14.200 must be written so that it grants standing to persons who ordinarily would have standing under Alaska case law.

We also agree that Alaska judges have not used the terms "private" or "substantive" to describe the legally protected interests that give rise to standing under Alaska case law. He concedes that these are terms that have been used in federal cases on standing.

Where we differ in our opinions is that Reges concludes that "private" and "substantive," even though they are federal terms and even though Alaskan judges don't use them, are properly descriptive of the types of interests legally protected under state case law. The logic behind that conclusion escapes me completely.

Reges erroneously concludes that "private" and "substantive," as used in federal case law, and the different terms, like "citizen-taxpayer," "sufficient interest," "significant

Attachment 2

4/13/93

Representative Kay Brown

April 13, 1993

Page 2

interest," and other principles used in state case law, are interchangeable because they "employ the same concept." This is not so; while they all describe "standing," they do not all set the same boundaries on standing.

While Reges points out that federal standing requirements have become more strict in recent federal cases, he points to no cases in which the broad standing requirements in Alaskan courts have become more narrow. Using the terms used by federal courts in their standing cases would certainly signal to Alaskan judges that the legislature intended to narrow the usually broader scope of standing afforded under state cases. Therefore, use of "private" and "substantive" in CSHB 167(JUD) would violate the federal requirement that standing under the air quality control program be governed by state case law.

This is not a case where Reges and I simply differ, as lawyers may, on the question of whether some terms are comparable to other terms. This is a question on which Alaskan courts have already spoken. Standing under Alaska case law is broader than under federal law; using federal terms to describe that standing makes no sense.

Therefore, I continue to recommend that "private" and "substantive" be deleted from AS 46.14.200. "Legally protected interest under state law" sufficiently describes standing under Alaska law. The limiting concepts of "private" and "substantive" are inappropriate.

- - - - -

I hope this memorandum lays out the issue clearly enough for the committee to make a decision. Please let me know if I can be of other assistance.

TML:pl:gc  
93-295.plm

Enclosure

# DIVISION OF LEGAL SERVICES

## LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

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

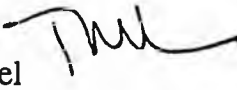
130 Seward Street, Suite 409  
Juneau, Alaska 99801-2105

### MEMORANDUM

April 20, 1993

**SUBJECT:** House Finance Amendments (CSHB 167(FIN))

**TO:** Representative Ron Larson

**FROM:** Terri Lauterbach   
Legislative Counsel

Enclosed is CSHB 167(FIN), incorporating the amendments adopted on April 19, 1993. The way our office handled two of the amendments bears some explaining.

Rep. Hanley's APUC amendment. This provision allows cost recovery by public utilities in their rates for their permit fees under AS 46.14. Rather than placing the provision in AS 46.14, we have added it to the APUC statutes with the approval of Representative Hanley's office. It shows up in sec. 11 of CSHB 167(FIN).

Rep. Brown's change in AS 46.03.760(f). This provision, as adopted, would have related not only to air quality violations, but also to violations relating to hazardous waste and radiation, thus greatly expanding the subject matter of the bill. House Finance staff requested that we limit the amendment so that it relates only to violations under AS 46.14. We have done so. Please see page 39, lines 12 - 14, of CSHB 167(FIN).

You will note that we have also added a sentence in lines 15 -16 on page 39 that was not specifically requested by the committee. We added it because AS 46.03.760(f), the subsection being amended, relates to liquidated damages payable to the state. Liquidated damages are ordinarily considered to be a payment for damages that are not easily calculable rather than damages to specific property or persons. It is not clear to us what the committee meant by adding the concept of harm to persons and property to this subsection, especially since the section relates to recovery by the state. For which persons and property should the state be recovering for harm? Without being able to clarify that precise issue, we feel it is important to at least

Representative Ron Larson  
April 20, 1993  
Page 2

clarify that the state's recovery for personal injury/property damage is not intended to foreclose suits by the private parties who were actually damaged. Thus, we added the sentence that appears on page 39, lines 15 - 16.

Please let us know if we can be of further assistance.

TML:gc  
93-352.glc

Enclosure

# FISCAL NOTE

For Information Purposes Only (Note 1)

**STATE OF ALASKA  
1993 LEGISLATIVE SESSION**

BILL NO. HB-167

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

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

COMPONENT SERIAL NO. 1428

**EXPENDITURES/REVENUES:**

(Thousands of Dollars)

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

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
FUND SOURCE: 1005	0.0	3747.1	3983.6	4220.1	3742.6	3742.6

**FUNDING:**

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

**POSITIONS:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1993 AIR BILL FISCAL NOTE BACK-UP

FY 93 TOTAL PERMIT PROGRAM COSTS

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

FY 93 TOTAL 1922.3

FY 95 TOTAL PERMIT PROGRAM COSTS

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

FY 95 TOTAL 3747.1

FY 96 TOTAL PERMIT PROGRAM COSTS

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

FY 96 TOTAL 3983.6

1993 AIR BILL FISCAL NOTE BACK-UP

FY 97 TOTAL PERMIT PROGRAM COSTS

Group	Pers. Services	Travel	Contractual	Supplies	Equipment	FTE
Per Ton Services	917.0	89.7	76.5	21.3	0.0	12.7
Permits	1558.5	50.0	133.9	29.0	0.0	22.3
Compliance	536.1	124.8	507.8	9.8	0.0	7.5
Monitoring	113.5	26.7	8.4	17.1	0.0	1.4
Totals	3125.2	291.2	726.5	77.2	0.0	43.9
FY 97 TOTAL	4220.1					

FY 98 TOTAL PERMIT PROGRAM COSTS

Group	Pers. Services	Travel	Contractual	Supplies	Equipment	FTE
Per Ton Services	917.0	89.7	76.5	21.3	0.0	12.7
Permits	931.1	35.0	78.6	13.2	0.0	13.1
Compliance	1121.5	179.5	96.1	12.5	0.0	16.0
Monitoring	113.5	30.0	8.4	18.8	0.0	1.4
Totals	3083.1	334.2	259.6	65.8	0.0	43.2
FY 98 TOTAL	3742.6					

FY 99 TOTAL PERMIT PROGRAM COSTS

Group	Pers. Services	Travel	Contractual	Supplies	Equipment	FTE
Per Ton Services	917.0	89.7	76.5	21.3	0.0	12.7
Permits	931.1	35.0	78.6	13.2	0.0	13.1
Compliance	1121.5	179.5	96.1	12.5	0.0	16.0
Monitoring	113.5	30.0	8.4	18.8	0.0	1.4
Totals	3083.1	334.2	259.6	65.8	0.0	43.2
FY 99 TOTAL	3742.6					

Position Title Environmental Engineering Associate			No. of Positions 11	Range / Step 18A	Barg. Unit GG
Time Status Full Time	Staff Months 132		Location Various	Election District Various	
<b>TYPE OF EXPENDITURE</b>			<b>Amount</b>		
Salary			\$461.9		
Benefits			\$181.2		
Premium Pay			\$0.0		
Other	19% Administrative		\$122.2		
Total Personal Services			\$765.3		
Travel	\$ 4,150 / FTE		<del>\$45.0</del>		
Contractual *	\$ 6,000 / FTE		(\$16.0)		
Commodities	\$ 1,500 / FTE		\$16.5		
Equipment	\$ 7,000 / FTE		\$77.0		
Other					
Total Cost			\$888.6		
<b>FUNDING SOURCE FOR TOTAL COST</b>					
Federal Receipts	1002				
G.F. Match	1003				
General Fund	1004				
I-A Receipts	1007				
CIP Receipts	1061				
Other	Program Receipts		\$888.6		
* EPA IPA position shifted from contractual to salary line item					
			<p>Justification</p> <p>The new Clean Air Act of 1990 requires all states to establish a completely new operating permit program which takes into account small sources never permitted before, includes greater public participation in the permit process, and requires the collection of fees to completely offset all costs for the review, issuance, and maintenance of the permit program. The Act also requires states to establish a Small Business Assistance Program which aids small businesses in permit process, provides technical and compliance assistance, and provides information about pollution prevention methods.</p> <p>The Environmental Engineering Associate will assist senior staff to:</p> <ol style="list-style-type: none"> <li>1. develop revised regulations and procedures, recognizing small business concerns;</li> <li>2. develop standardized permit applications;</li> <li>3. identify and assist new permittees;</li> <li>4. provide assistance and information to permit applicants;</li> <li>5. review permit applications;</li> <li>6. prepare draft permits;</li> <li>7. develop the small business and pollution prevention programs;</li> <li>8. train regional and district permit liaisons;</li> <li>9. conduct inspections and compliance certifications;</li> </ol> <p>and</p> <ol style="list-style-type: none"> <li>10. establish a quality control/quality assurance audit program.</li> </ol>		

AGENCY Environmental Conservation

FY 95

Page 1 of 9

BRU Environmental Quality

COMPONENT Air Quality Management

Revised Date: 2/1/93

**Request For  
New Position**



Position Title Environmental Manager I (Small Business Advocate)			No. of Positions 1	Range / Step 20A	Barg. Unit Supervisory
Time Status Full Time	Staff Months 12		Location Anchorage	Election District Anchorage	
<b>TYPE OF EXPENDITURE</b>			Amount	Justification	
Salary			\$48.4	<p>The new Clean Air Act of 1990 requires all states to establish a completely new operating permit program which takes into account small sources never permitted before, includes greater public participation in the permit process, and requires the collection of fees to completely offset all costs for the review, issuance, and maintenance of the permit program. The Act also requires states to establish a Small Business Assistance Program which aids small businesses in permit process, provides technical and compliance assistance, and provides information about pollution prevention methods.</p> <p>The Environmental Manager I (Small Business Advocate) will:</p> <ol style="list-style-type: none"> <li>1. develop revised regulations, recognizing small business concerns;</li> <li>2. identify and assist small business permittees;</li> <li>3. develop standardized permit applications;</li> <li>4. prepare pollution prevention assistance programs;</li> <li>5. provide assistance and information to permit applicants;</li> <li>6. supervise the small business program;</li> <li>7. train regional and district small business liaisons;</li> </ol> <p>and</p> <ol style="list-style-type: none"> <li>8. report to the Small Business Compliance Advisory Panel.</li> </ol>	
Benefits			\$18.1		
Premium Pay			\$0.0		
Other	19% Administrative		\$12.6		
Total Personal Services			\$79.1		
Travel			\$40.3		
Contractual	\$ 6,000 / FTE		\$6.0		
Commodities	\$ 1,500 / FTE		\$1.5		
Equipment	\$ 7,000 / FTE		\$7.0		
Other	Compliance Advisory Panel Costs		\$25.4		
Total Cost			\$159.3		
<b>FUNDING SOURCE FOR TOTAL COST</b>					
Federal Receipts	1002				
G.F. Match	1003				
General Fund	1004				
I-A Receipts	1007				
CIP Receipts	1061				
Other	Program Receipts		\$159.3		

AGENCY Environmental Conservation

FY 95

Page 3 of 9

BRU Environmental Quality

COMPONENT Air Quality Management

Revised Date: 2/1/93

**Request For  
New Position**

Position Title <b>Attorney III</b>			No. of Positions <b>1</b>	Range / Step <b>22A</b>	Barg. Unit <b>Partially Exempt</b>
Time Status <b>Full Time</b>	Staff Months <b>6</b>		Location <b>Juneau</b>	Election District <b>Juneau</b>	
<b>TYPE OF EXPENDITURE</b>			Amount	Justification The new Clean Air Act of 1990 requires all states to establish a completely new operating permit program which takes into account small sources never permitted before, includes greater public participation in the permit process, and requires the collection of fees to completely offset all costs for the review, issuance, and maintenance of the permit program. The Act also requires states to establish a Small Business Assistance Program which aids small businesses in permit process, provides technical and compliance assistance, and provides information about pollution prevention methods.  The Attorney III will: 1. issue opinions to interpret and apply legislation, regulations or other legal instruments; 2. draft enabling statutory authority; 3. perform comprehensive studies of legal questions where development of all background material is required; 4. advise and assist state agencies in conducting hearings and conferences and in preparing findings of fact, conclusions of law and decisions; 5. provide assistance to program staff on statutory procedures; 6. review State Implementation Plan revisions prior to submission to USEPA; and 7. review regulations prior to submission to Department of Law.	
Salary			\$26.7		
Benefits			\$9.7		
Premium Pay			\$0.0		
Other 19% Administrative			\$6.9		
Total Personal Services			\$43.3		
Travel \$ 4,000 / FTE			\$2.0		
Contractual \$ 6,000 / FTE			\$3.0		
Commodities \$ 1,500 / FTE			\$0.8		
Equipment \$ 7,000 / FTE			\$3.5		
Other					
Total Cost			\$52.6		
<b>FUNDING SOURCE FOR TOTAL COST</b>					
Federal Receipts 1002					
G.F. Match 1003					
General Fund 1004					
I-A Receipts 1007					
CIP Receipts 1061					
Other Program Receipts			\$52.6		

AGENCY Environmental Conservation

FY 95

Page 4 of 9

BRU Environmental Quality

COMPONENT Air Quality Management

Revised Date: 2/1/93

**Request For  
New Position**



Position Title Paralegal Assistant II		No. of Positions 1	Range / Step 16A	Barg. Unit GG
Time Status Full Time	Staff Months 11	Location Juneau		Election District Juneau
<b>TYPE OF EXPENDITURE</b>		Amount	<b>Justification</b>  The new Clean Air Act of 1990 requires all states to establish a completely new operating permit program which takes into account small sources never permitted before, includes greater public participation in the permit process, and requires the collection of fees to completely offset all costs for the review, issuance, and maintenance of the permit program. The Act also requires states to establish a Small Business Assistance Program which aids small businesses in permit process, provides technical and compliance assistance, and provides information about pollution prevention methods.  The Paralegal Assistant II will: 1. assist in drafting enabling statutory authority; 2. assist in developing comprehensive and understandable regulations; 3. draft procedures for public participation in the permit process; 4. prepare draft regulations for pollution prevention; 5. provide assistance to program staff on regulatory procedures; 6. assist in developing the State Implementation Plan; 7. prepare program authority certifications to USEPA; 8. develop enhanced administrative review procedures; and 9. coordinate with established judicial review procedures.	
Salary		\$32.8		
Benefits		\$13.5		
Premium Pay		\$0.0		
Other	19% Administrative	\$8.8		
Total Personal Services		\$55.1		
Travel	\$ 4,000 / FTE	\$3.6		
Contractual	\$ 6,000 / FTE	\$5.5		
Commodities	\$ 1,500 / FTE	\$1.4		
Equipment	\$ 7,000 / FTE	\$6.3		
Other				
Total Cost		\$71.9		
<b>FUNDING SOURCE FOR TOTAL COST</b>				
Federal Receipts	1002			
G.F. Match	1003			
General Fund	1004			
I-A Receipts	1007			
CIP Receipts	1061			
Other	Program Receipts	\$71.9		

AGENCY Environmental Conservation

BRU Environmental Quality

COMPONENT Air Quality Management

**FY 95**

Page 6 of 9

Revised Date: 2/1/93

**Request For  
New Position**

Position Title Administrative Assistant II		No. of Positions 1	Range / Step 14A	Barg. Unit GG
Time Status Full Time	Staff Months 10	Location Juneau		Election District Juneau
<b>TYPE OF EXPENDITURE</b>		Amount	Justification  The new Clean Air Act of 1990 requires all states to establish a completely new operating permit program which takes into account small sources never permitted before, includes greater public participation in the permit process, and requires the collection of fees to completely offset all costs for the review, issuance, and maintenance of the permit program. The Act also requires states to establish a Small Business Assistance Program which aids small businesses in permit process, provides technical and compliance assistance, and provides information about pollution prevention methods.  The Administrative Assistant II will: 1. provide assistance and information to permit applicants; 2. issue standardized permit applications; 3. supervise procedures to track permit applications and fees; 4. implement reporting and auditing procedures; 5. supervise and audit permit documentation procedures; 6. assure uniform accounting procedures for permit fees; 7. coordinate program support functions; and 8. provide standardized managerial summaries of program activity.	
Salary		\$25.4		
Benefits		\$11.0		
Premium Pay		\$0.0		
Other	19% Administrative	\$6.9		
Total Personal Services		\$43.3		
Travel		\$0.0		
Contractual	\$ 6,000 / FTE	\$5.0		
Commodities	\$ 1,500 / FTE	\$1.3		
Equipment	\$ 7,000 / FTE	\$5.6		
Other				
Total Cost		\$55.2		
<b>FUNDING SOURCE FOR TOTAL COST</b>				
Federal Receipts	1002			
G.F. Match	1003			
General Fund	1004			
I-A Receipts	1007			
CIP Receipts	1061			
Other	Program Receipts	\$55.2		

AGENCY Environmental Conservation

FY 95

BRU Environmental Quality

Page 7 of 9

COMPONENT Air Quality Management

Revised Date: 2/1/93

**Request For  
New Position**



Position Title Clerk Typist III			No. of Positions 3.5	Range / Step 08A	Barg. Unit GG
Time Status Full Time*	Staff Months 41		Location Various	Election District Various	
<b>TYPE OF EXPENDITURE</b>			Amount	<b>Justification</b>  The new Clean Air Act of 1990 requires all states to establish a completely new operating permit program which takes into account small sources never permitted before, includes greater public participation in the permit process, and requires the collection of fees to completely offset all costs for the review, issuance, and maintenance of the permit program. The Act also requires states to establish a Small Business Assistance Program which aids small businesses in permit process, provides technical and compliance assistance, and provides information about pollution prevention methods.  The Clerk Typist III will assist senior staff to: 1. prepare information packets for permittees; 2. provide assistance and information to permit applicants; 3. operate small businesses and pollution prevention hotlines; 4. issue and receive standardized permit applications; 5. develop procedures to track permit applications; 6. prepare permit documentation and correspondence; 7. develop correspondence tracking systems; and 8. develop and maintain application and permit files.	
Salary		\$74.8			
Benefits		\$37.8			
Premium Pay		\$0.0			
Other	19% Administrative	\$21.4			
Total Personal Services		\$134.0			
Travel		\$0.0			
Contractual	\$ 6,000 / FTE	\$20.5			
Commodities	\$ 1,500 / FTE	\$5.1			
Equipment	\$ 7,000 / FTE	\$23.8			
Other					
Total Cost		\$183.4			
<b>FUNDING SOURCE FOR TOTAL COST</b>					
Federal Receipts	1002				
G.F. Match	1003				
General Fund	1004				
I-A Receipts	1007				
CIP Receipts	1061				
Other	Program Receipts	\$183.4			
* 3 Full Time 1 Half Time					

AGENCY Environmental Conservation

FY 95

Page 9 of 9

BRU Environmental Quality

COMPONENT Air Quality Management

Revised Date: 2/1/93

**Request For  
New Position**

**FISCAL NOTE**

Revision Date:  
Title: Air Quality Control Programs

Department Affected: DOT&PF  
BRU:

Sponsor: Hanley  
Requestor: Hanley

Component:  
Component Serial Number:

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

OPERATING	FY94	FY95	FY96	FY97	FY98	FY99
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
<b>TOTAL OPERATING:</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

CAPITAL	0	0	0	0	0	0
---------	---	---	---	---	---	---

REVENUE FUND SOURCE	0	0	0	0	0	0
---------------------	---	---	---	---	---	---

**FUNDING: (Thousands of Dollars)**

1002 FEDERAL RECEIPTS	0	0	0	0	0	0
1003 GF MATCH	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/PROGRAM RECEIPTS	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
<b>TOTAL FUNDING:</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

**POSITIONS**

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

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

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

Prepared by: Jeffrey C. Ottesen

Phone: 465-2951

Division: Engineering & Operations Standards

Date: March 1, 1993

Approved by Commissioner:   
Frank G. Turpin

Phone: 465-3901

Agency: Department of Transportation and Public Facilities

Date: March 1, 1993

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE  
For further distribution information call the Governor's Legislative Office



*Department of Transportation  
and Public Facilities*

# POSITION PAPER

BILL NO: HB 167

APPROVED:

A handwritten signature in cursive script, likely of a department official.

TITLE: Air Quality Control Program

DATE: February 24, 1993

This is one of three similiar bills which have been introduced to amend Alaska law to conform to the federal Clean Air Act. Given that Alaska must make certain essential changes in order to comply with federal mandates, we have no material preference as to which "clean air" bill is enacted. We do, however, strongly encourage the passage of this or a similiar bill.

The federal Clean Air Act Amendments of 1990 placed certain obligations on each state with regard to control of motor vehicle and industrial air pollution. To ensure that states comply with these requirements, federal-aid highway funding is used as an enforcement lever. If the state fails to live up to the requirements which this bill is intended to accomplish, the EPA Administrator must prohibit the approval of highway projects and highway grants.

The original grace period for state action has passed, and the time for action is now. The state's failure to enact this bill this session could result in the withholding of federal highway funding beginning in FY94. The state currently intends to receive \$215 million in federal highway money in FY94.

*For Further Information contact Katy McHugh at 465-3900.*

Attachment # 3  
4/15/93 am

HB 167-AMENDMENTS  
REP. KAY BROWN  
4/14/93

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE BROWN

TO: CS HB 167(JUD)

Page 15, after line 23:

Add a new subsection:

"(d) Costs incurred by the department and other state or local governmental agencies for services described in AS 46.14.240(c)(1) - (2) to facilities that qualify under the small business assistance program, AS 46.14.300 - 46.14.310, shall be recovered from emission fees under AS 46.14.250(n)(2).

Page 17, line 26, after ";":

Insert "costs recovered by emission fees under this section must include the total costs of the small business assistance program under AS 46.14.300 - 46.14.310;"

2

8-LS04920.3-  
Lauterbach  
4/13/93

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE BROWN

TO: CSHB 167(JUD)

Page 17, line 26, after ";

Insert "the costs must include the costs incurred by the department or a local air quality control program in order to comply with the peer review requirements of AS 46.14.015;"

A M E N D M E N T

OFFERED IN THE HOUSE

BY REPRESENTATIVE BROWN

TO: CSHB 167(JUD)

Page 24, after line 21:

Insert new paragraphs to read:

"(4) the procedures that must be followed by the municipality or local air quality district when requesting money from the clean air protection fund to cover the costs of implementing the municipality's or district's air quality program;

(5) the procedures that will be used by the department in approving a request under (4) of this subsection and submitting it to the legislature for funding;"

Renumber the following paragraph accordingly.

4  
HB 167-AMENDMENTS  
REP. KAY BROWN  
4/14/93

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE BROWN

TO: CS HB 167(JUD)

Page 30, line 18, after "an":

Insert "unavoidable"

after "or":

Delete "unavoidable"

Page 30, line 20 after "equipment":

Insert "may"

Page 30, line 21 after "with a":

Insert "technology based emission standard"

Delete "permit or an emission limitation and may not count as an increase  
in emissions unless an ambient air quality standard is exceeded"

5

8-LS04930.6  
Lauterbach  
4/13/93

AMENDMENT

OFFERED IN THE HOUSE  
TO: CSHB 167(JUD)

BY REPRESENTATIVE BROWN

Page 20, line 18:

Delete "may"

Insert "shall"

6

8-LS04920.5  
Lauterbach  
4/13/93

A M E N D M E N T

OFFERED IN THE HOUSE  
TO: CSHB 167(JUD)

BY REPRESENTATIVE BROWN

Page 14, line 6:

Delete "including"

Insert "other than"

Page 14, line 9, after ".":

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

7

HB 167—AMENDMENTS  
REP. KAY BROWN  
4/14/93

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE BROWN

TO: CS HB 167(JUD)

Page 31, line 29 after "adjacent,":

Insert "including berthed vessels,"

8

8-LS04920.4 ✓  
Lauterbach  
4/13/93

AMENDMENT

OFFERED IN THE HOUSE  
TO: CSHB 167(JUD)

BY REPRESENTATIVE BROWN

Page 12, line 24:

Delete "private, substantive,"

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE BROWN

TO CS HB 167(JUD)

Page 2, line 8:

Delete "(a)"

Page 2, line 10:

Delete ", emission standards, or exemptions"

Page 2, line 14 through page 3, line 18:

Delete subsections "(b)" through "(f)"

Page 3, line 19:

Delete the entire section 46.14.015.

Add a new section:

" 46.14.015. PEER REVIEW. (a) Before adopting a regulation which

- (1) establishes an ambient air quality standard for an air contaminant for which there is no corresponding federal standard; or
- (2) establishes an ambient air quality standard or emission standard that is more stringent than a corresponding federal standard; or
- (3) establishes an equivalent emission limitation for a hazardous air contaminant for which there is no corresponding maximum achievable control technology standard; or

(4) regulates emissions from a source or facility under the authority of AS 46.14.120(e), 46.14.130(a)(3)(B), or 46.14.130(b)(4)(B), the department shall make written findings of its basis for the proposed action.

(b) if requested by an affected regulated party, the department shall obtain independent peer review of its findings to assist the commissioner in determining if there is a reasonable basis to undertake the action.

(c) To obtain independent peer review the commissioner shall enter into individual contracts with a minimum of three separate parties from outside the department, determined by the commissioner to be technically qualified in the subject matter under review. The commissioner may not contract under this section with any party who has a significant financial interest or other significant interest that would bias the evaluation. An interest is insignificant if it is of a type that is possessed generally by the public or a large class of persons, or is such that the interest would have a conjectural effect on the person's ability to be impartial.

(d) The commissioner shall assure that

(1) peer review analyzes the technical and economic feasibility, human health and environmental effects and other factors determined by the commissioner to be necessary in evaluating the reasonableness of the proposed action;

(2) the findings of each reviewer are to be provided in a report submitted to the commissioner within 45 days after execution of the contract unless otherwise extended by the commissioner; and

(3) the findings of each reviewer shall be incorporated into the public record for the proposed action.

10

A M E N D M E N T

OFFERED IN THE HOUSE  
TO: CSHB 167(JUD)

BY REPRESENTATIVE BROWN

Page 2, line 15:

Delete "AS 46.14.015"  
Insert "(c) and (d) of this section"

Page 2, line 26, after "demonstrate":

Insert "in written findings"

Page 3, line 3, after "demonstrate":

Insert "in written findings"

Page 3, line 19, through page 4, line 14:

Delete all material.

Page 25, line 4:

Delete "AS 46.14.010 - 46.14.015"  
Insert "AS 46.14.010"

Page 25, line 9:

Delete "AS 46.14.010 - 46.14.015"  
Insert "AS 46.14.010"

Page 40, line 22:

Delete "46.14.015,"

HB 167—AMENDMENTS  
REP. KAY BROWN  
4/14/93

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE BROWN

TO: CS HB 167(JUD)

Page 2, line 31 and page 3, line 1:

Delete "and economically"

HB 167-AMENDMENTS  
REP. KAY BROWN  
4/14/93

12

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE BROWN

TO: CS HB 167(JUD)

Page 2, line 27:

Delete "(1)"

Page 2, line 30:

Delete "; and"

after "environment":

Insert "."

Page 2, line 31:

Delete all of subsection "(2)".

Add new subsection:

"(d) Before adopting regulations under (b) of this section, the commissioner shall analyze the proposed standard or emission limitation to determine whether it is technologically and economically feasible."

13

HB 167--AMENDMENTS  
REP. KAY BROWN  
4/14/93

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE BROWN

TO: CS HB 167(JUD)

Page 3, line 6 through line 10:

Delete subsection "(e)"

Renumber accordingly.

14  
HB 167—AMENDMENTS  
REP. KAY BROWN  
4/14/93

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE BROWN

TO: CS HB 167(JUD)

Page 3, line 6:

Delete "a"

Insert "more than one"

Page 3, line 10, after "issued.":

Insert "A requirement identified in this section shall be adopted in regulation as soon as its general applicability is reasonably foreseeable."

Attachment #4  
4/15/93 HL

AMENDMENT

OFFERED IN THE HOUSE

BY REP. HANLEY

TO: CS HB 167 (JUD)

Page 30, Line 18, after "an"

insert "unavoidable"

Page 30, line 18, after "or"

delete "unavoidable"

Page 30, line 20, after "equipment"

insert "may"

Page 30, line 21, after "with a"

insert "technology based emission standard"

delete "permit or an emission limitation and may not count as an increase in emissions unless an ambient air quality standard is exceeded."

Attachment 5  
4/15/93

DEPARTMENT OF LAW CONCERNS WITH PROPOSED SECTIONS 46.14.010 AND 46.14.015 AND PROPOSED AMENDMENTS THERETO TOGETHER WITH OTHER MINOR CHANGES SOUGHT BY LAW

Note: All proposed amendments refer to CSHB 167(JUD), as offered on 4/7/93 [8-LS0492\0]

- #1. Page 2, line 10  
delete "that are necessary"
- #2. Page 2, line 12 after "amended":  
insert "and regulations adopted under those sections."
- #3. Page 2, line 14, after "(b)":  
insert "Except where the Governor has determined that an emergency exists, in adopting regulations under (a) of this section,"
- #4. Page 2, line 15  
delete "public hearing and"
- #5. Page 2, line 25  
delete "Before adopting"  
insert "In preparation for peer review of"
- #6. Page 2, line 26  
delete "shall demonstrate"  
insert "must conclude, in written findings"
- #7. Page 3, line 1  
delete "economically feasible"
- #8. Page 3, line 3  
delete "shall also demonstrate"  
insert "must also conclude, in written findings"
- #9. Page 3, line 20  
delete "Before adopting"  
insert "For"
- #10. Page 3, line 21  
delete "provide"  
insert "prepare"

- #11. Page 3, line 24  
delete "convenient locations"  
insert "locations throughout the state that the  
department considers appropriate."
- #12. Page 4, lines 11-12  
delete "on the basis of competitive sealed proposals"
- #13. Page 6, line 1  
delete "or issue"  
  
Page 6, line 2, after "or":  
insert "issue an"
- #14. Page 6, line 24  
delete "by regulation"  
  
Page 6, line 25, after "and"  
insert ",by regulation,"
- #15. Page 8, line 4  
delete "all"
- #16. Page 31, line <sup>26</sup>29, after "installations,"  
insert "anchored or berthed vessels"

failed

8-LS0492R.2  
Lauterbach  
4/19/93

A M E N D M E N T

18

OFFERED IN THE HOUSE

BY REPRESENTATIVE NAVARRE

TO: CSHB 167( ) (Draft 8-LS0492R)

Page 31, after line 24:

Insert the following:

"ARTICLE 6. PENALTIES.

Sec. 46.14.850. CRIMINAL PENALTIES. (a) If the person has received the certified notice from the department required under (g) of this section, a person is guilty of a class A misdemeanor if the person, with criminal negligence,

(1) fails to provide material information or provides false material information, or makes a false material statement or certification in an application, notice, record, report, permit, or other document filed, maintained, or used for purposes of compliance with this chapter or a regulation adopted under this chapter;

(2) renders inaccurate a monitoring device required to be maintained under this chapter, a regulation adopted under this chapter, or a permit issued by the department or a local air quality control program under this chapter;

(3) violates a material condition of a permit issued under this chapter and the violation is not otherwise described in (1) or (2) of this subsection.

(b) A person is guilty of a class A felony if the person knowingly releases, or causes to be released into the ambient air, an air contaminant without a permit issued under this chapter, or in excess of permitted levels, and knows at the time that the release places another person in imminent danger of death or serious bodily injury.

(c) A person is guilty of a class C felony if that person recklessly releases or causes to be released into the ambient air an air contaminant without a permit issued under this chapter or in excess of permitted levels and thereby places another person in imminent danger of death or serious bodily injury.

(d) A person is guilty of a class A misdemeanor if that person with criminal negligence emits or causes to be emitted air contaminants without a permit required

under this chapter unless the emission is otherwise authorized under this chapter or 42 U.S.C. 7401 - 7671q (Clean Air Act).

(e) Each day on which a violation described in this section occurs is considered a separate violation.

(f) It is an affirmative defense to a prosecution under (b) - (d) of this section that the conduct charged was freely consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of

(1) an occupation, a business, or a profession; or

(2) medical treatment or medical or scientific experimentation conducted by professionally approved methods and the endangered person had been made aware of the risks involved before giving consent; the defendant may establish an affirmative defense under this paragraph by a preponderance of the evidence.

(g) The department shall send, by certified mail, a copy of this section to an owner and operator who applies for a permit under this chapter or who requests assistance in applying for a permit under this chapter. For purposes of (a) of this section, a person is considered to have received the notice if the certified notice was signed by a representative, employee, or employer of the person. The certification must include a representation that the notice will be displayed and communicated within the facility permitted under this chapter.

(h) Notwithstanding AS 12.55.035(b), upon conviction of an offense under (a) of this section, a defendant who is not an organization may be sentenced to pay a fine of not more than \$10,000 for each separate offense.

(i) In this section, "criminal negligence," "knowingly," and "recklessly" have the meanings given in AS 11.81.900(a)."

Renumber the following Article accordingly.

Page 39, line 25, through page 40, line 19:

Delete all material.

Renumber the following bill sections accordingly.

Back-up

# HB 167 / AIR QUALITY PERMITS

## SECTIONAL ANALYSIS

### Section 1.

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

### Section 2.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**AS 46.14.140. EMISSION CONTROL PERMIT PROGRAM REGULATIONS -**

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

**AS 46.14.150. TIME FOR SUBMISSION OF PERMIT APPLICATIONS -**

The section identifies when operating permit applications are due. In most cases the due date is within twelve months after the permit program is first approved by EPA or twelve months after a facility becomes regulated (begins to operate).

**AS 46.14.160. COMPLETENESS DETERMINATION -**

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

**AS 46.14.170. ADMINISTRATIVE ACTIONS REGARDING PERMITS -**

The language in this section specifies the timeliness for permit decisions. General permits and temporary operating permits will be issued in shorter time periods than other operating permits.

**AS 46.14.180. MONITORING -**

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

**AS 46.14.190. SINGLE PERMIT -**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**AS 46.14.090. DEFINITIONS** - Twenty four definition of terms are created for use in this act.

**Sections 3 through 14.**

Conforms existing statute to new citations created by this act.

**Section 15.**

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

**Sections 16 and 17.**

Conforms existing statute to new citations created by this act.

**Sections 18 and 19.**

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

**Sections 20 through 25.**

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

**Section 26.**

Repeals existing statutes that are replaced or no longer required.

**Section 27.**

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

**Section 28.**

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

**Section 29.**

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

**Section 30.**

Identifies those provisions of this act that take effect immediately.

**Section 31.**

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

**AIR QUALITY LEGISLATIVE WORKING COMMITTEE**

February 2, 1993

The Honorable Senator Mike Miller  
The Honorable Representative Kay Brown  
Alaska State Legislature  
Box V  
Juneau, AK 99811

Dear Senator Miller and Representative Brown:

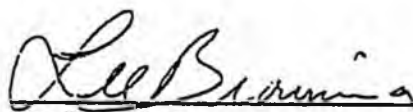
Since the citizen Air Quality Legislative Working Committee's draft legislation was submitted, some questions regarding the Working Committee's work effort have come to our attention. In particular, the purpose of this letter is to clarify certain aspects of the Working Committee's position as it relates to the state's ability to adopt regulatory standards more stringent than federal standards or to regulate a source otherwise unregulated by the federal government.

In order to resolve any potential ambiguity or misunderstanding about the Air Quality Legislative Working Committee's view of this issue, we want you to know that this issue was the subject of many lengthy discussions and, in the Working Committee's view, was adequately addressed by the Working Committee. After substantial debate, the Working Committee members adopted a unanimous position in support of the right to enact standards more stringent than federal standards or to regulate a source that may be otherwise unregulated by the department, supported by technically and scientifically sound analysis subject to an open, public process.

During the most recent meeting of the Working Committee, we revisited this issue and reaffirmed our previous position. At the same time, discussions of the Working Committee brought to light the concerns of some members that permit standards and emissions limitations should be implemented in a manner that ensures a fully public process. During our discussions it was noted that the proposed AS 46.03.156(a) specifically requires that "the department shall adopt regulations to address all substantive and procedural elements of the emission control permit program not addressed in statute [and that] regulations must include . . . standard permit conditions including conditions for emission standards and limitation." Notwithstanding this clear directive, the Working Committee will continue to address the best mechanisms to ensure that permit restrictions are subject to appropriate technical review and public scrutiny and will respond back to the legislature.

As you are aware, Commissioner Sandor has asked that the Air Quality Legislative Working Committee continue to provide the department and the legislature with the perspective of the many and various broad-based interests represented by the committee members. In that capacity we wanted to provide you with this letter and to let you know that we look forward to working with you in your consideration of the air quality legislation.

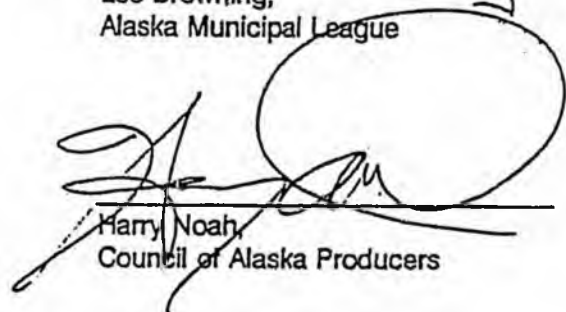
Sincerely,



Lee Browning,  
Alaska Municipal League



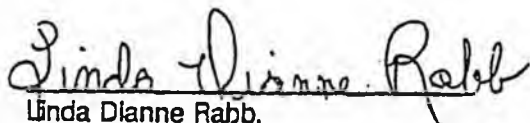
Steven Taylor,  
Alaska Oil & Gas Asscc.



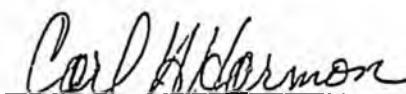
Harry Noah,  
Council of Alaska Producers

Orally Approved by  
Rick Lauber 2/2/93  
T. Chapple

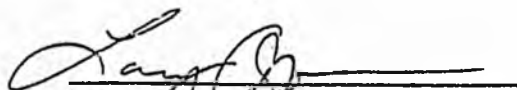
Rick Lauber,  
Pacific Seafood Processors Association



Linda Dianne Rabb,  
Rural Alaska Power Association

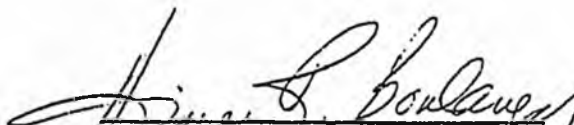


Carl H. Harmon,  
Alaska Rural Electric Cooperative Association




---

Larry Opperman  
U.S. Air Force



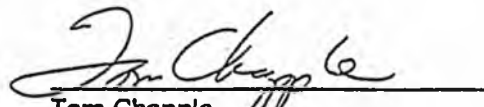
---

Aipree Boulanger,  
Alaska Center for the Environment/  
Alaska Environmental Lobby



---

Eric Myers,  
General Public



---

Tom Chapple,  
Alaska Dept. of Env. Conservation -  
Committee Chair

cc: Members of Alaska State Legislature  
ADEC Commissioner John Sandor  
ADEC Assistant Commissioner Janice Adair

**AIR QUALITY LEGISLATIVE WORKING COMMITTEE**

**COMMITTEE MEMBERS**

10/26/92

NAME	AFFILIATION	REPRESENTING	CONTACT NO.
Lee Browning	Municipality of Anchorage	Alaska Municipal League	Phone 343-4928 Fax 343-6740
Steven Taylor	British Petroleum Exploration Inc.	Alaska Oil & Gas Assoc.	Phone 564-4037 Fax 564-5020
Harry Noah Gene Andrews (alternate)	Consultant	Council of Alaska Producers (mining trade assoc.)	Phone 265-3100 or 452-4653 Fax 265-3180 or 451-4305
John Iani Rick Lauber (alternate)	Pacific Seafood Processors Assoc.	Pacific Seafood Processors	Phone (206) 281-1667 or 586-6356 Fax (206) 283-2387 (Both) 463-5298
Linda Dianne Rabb	Rural Alaska Power Assoc.	Rural Electric Utilities	Phone 345-5771 Fax 345-5878
Carl Harmon	Chugach Electric Association	Large Electric Utilities for Alaska Rural Electric Cooperative Assoc. (ARECA)	Phone 762-4739 Fax 562-0027
Larry Opperman	U.S. Air Force	U.S. Air Force	Phone 552-4157 Fax 552-1533
Aimee Boulanger	Alaska Center for the Environment	Environmental Advocacy Groups for the Alaska Environmental Lobby	Phone 274-3621 Fax 274-4145
Eric Myers	Self	General Public	Phone 272-3034 Fax 272-7122
Tom Chappie	Alaska Dept. of Environmental Conservation (ADEC)	ADEC	Phone 465-5100 Fax 465-5129