

ALASKA LEGISLATURE

1827

HOUSE and SENATE FINANCE COMMITTEE FILES, 1997-1998

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

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

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

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

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

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

B. Scope of Implied Preemption of State Standards

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

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

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

\6\ 59 FR 36969, 36973 (July 20, 1994).
\7\ 40 CFR 86.1604(a) (July 1, 1996).

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

[[Page 67735]]

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

\8\Section 209(e)(2)(A) states ``In the case of any nonroad vehicles or engines other than those referred to in subparagraph (A) or (B) of paragraph (1), * * *''
\9\EMA v. EPA, 88 F.3d at 1094.

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

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

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

C. Public Participation and Effective Date

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

Adverse
Comments?

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

IV. Administrative Requirements

A. Administrative Designation

Under Executive Order 12866 (58 FR 51725 (October 4, 1993)), the Agency must determine whether the regulatory action is ``significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ``significant regulatory action'' as

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

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

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

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

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

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

B. Reporting and Recordkeeping Requirements

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

C. Regulatory Flexibility

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

D. Submission to Congress and the General Accounting Office

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

E. Unfunded Mandates Act

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

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

List of Subjects

40 CFR Part 85

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

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Reporting and recordkeeping requirements, State controls.

40 CFR Part 89

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

Dated: December 17, 1997.

Carol M. Browner,
Administrator.

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



NOTE

PART 85--CONTROL OF AIR POLLUTION FROM MOBILE SOURCES

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

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

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

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

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

Sec. 85.1603 Application of definitions; scope of preemption.

* * * * *

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

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

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

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

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

Sec. 85.1604 Procedures for California nonroad authorization requests.

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

* * * * *

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

Sec. 85.1606 Adoption of California standards by other states.

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

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

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

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

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

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

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

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

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

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



DRILLING RIG ENGINES

- A. The following states, one way or another, address drilling rig engines in their state construction permit regulations:
1. Colorado: Specifically exempt drilling rig engines from permitting requirements.
 2. Montana: Exempt drilling rig engines with the potential to emit less than 100 tpy of any pollutant.
 3. North Dakota: There is a provision which exempts oil and gas production facilities from permitting requirements, if the emissions are less than 100 tpy of any criteria pollutant, or 10/25 tpy of HAPs. It is not clear whether this provision covers drilling rigs.
 4. Texas: If an engine stays at a location for a duration less than 6 months, it is considered a temporary, not stationary, facility. It is therefore not required to have a permit.
- B. Other states reviewed (Kansas, Louisiana, Nebraska, New Mexico, Oklahoma, Utah, and Wyoming): Although regulations in those states are acquiescent with regard to drilling rig engine issue, neither operators nor drilling contractors have ever been required to obtain state construction permits for drilling rig engines. It appears that EPA's definition of a non-road engine are accepted by those states. Since drilling rig engines are considered non-road engines, not stationary sources, state construction permits are not required.

SUMMARY

General Comments

1. Construction permit requirements in ten states have been reviewed: Colorado, Kansas, Louisiana, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, Texas and Utah.
2. All states reviewed require a construction permit for the construction of a new source or modification of an existing source, from which air contaminants are to be emitted.
3. All states reviewed allow exemptions for "de minimis emissions", except for Texas. "De minimis exemptions" exempt constructions or modifications with emissions below certain threshold from permitting process.
4. The construction permit programs in some states allow streamlined permitting process for E&P, such as a standard permit, general permit, standard exemption, streamlined permit, or permit-by-rule. The standard exemptions in Texas more or less fit in this category.
5. General practice by the industry varies depending on state agency's interpretation of the regulations and their enforcement activities. In states where agency does not interpret or enforce the rules to the letter of the law, operators' permitting practice generally reflects agency's interpretation and enforcement policy.

Individual States -- The exemption levels are listed below:

A. Colorado

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

B. Kansas

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

- b. An approval is required (even though a permit is not required), if the PTE > 5 lb/hr PM₁₀; 2 lb/hr PM and SO_x; 50 lb/hr CO and NO_x; 50 lb/hr VOC in attainment area.
 2. Currently, there are no general permits for construction permit program.
- C. Louisiana
1. De minimis emission exemption: < 5 tpy of any regulated air pollutant, and less than the de minimis emission rate for Louisiana toxic air pollutants (0.13 tpy benzene; 5 tpy each for toluene, ethylbenzene, xylene, and n-hexane).
 2. Small source permit (a streamlined process): < 25 tpy of any regulated pollutant.
 3. There is a general permit for E&P.
- D. Montana
1. De minimis emission exemption:
 - a. PTE < 25 tpy of any regulated pollutant;
 - b. drilling rig stationary engines with the PTE < 100 tpy any pollutant; and
 - c. Changes at a site holding a construction, whose increase in PTE < 15 tpy any pollutant.
 2. No permit by rule available.
- E. Nebraska
1. De minimis emission exemption: PTE < 15 tpy PM₁₀; 25 tpy PM; 40 tpy VOC, SO₂, NO_x; 54 tpy CO; 2.5/10 tpy HAPs.
 2. No permit by rule available.
- F. New Mexico
1. De minimis emission exemption:
 - a. 25 tpy or 10 lb/hr of any regulated pollutants.
 - b. Non-major HAP sources.
 2. Streamlined permitting process allowed for internal combustion engines.
- G. North Dakota
1. De minimis emission exemption for oil and gas production facilities: < 100 tpy criteria pollutants, 10/25 tpy HAPs.
 2. Exemption for fossil fuel burning equipment which meets all following:
 - a. Heat input < 10 MMBtu/hr for a single unit, or all units at the site;
 - b. Actual emission < 25 tpy, PTE < 100 tpy any contaminant.
- H. Oklahoma
1. De minimis emission exemption: 1) < 1 lb/hr of any criteria pollutant; 2) toxics < de minimis level (benzene: 1200 lb/yr, 0.57 lb/hr); and 3) not a NSPS or NESHAP source.
 2. Many E&P operators follow a streamlined procedure for Title V in addressing pre-construction permit:
 - a. Submit a letter only if the PTE 0-50 tpy any criteria pollutant, or 0-5 tpy HAPs.
 - b. Submit a letter with supporting documentation if the PTE 50 - 100 tpy any criteria

pollutant, or 5-10 tpy HAPs.

- I. Texas ["Temporary engines" do not need permit. "Temporary" oil and gas facilities (<90 days) can use Standard Exemption 67.]
 1. There are no "de minimis emission exemptions". Standard exemptions are "permit by rule".
 2. In general, standard exemptions are allowed for E&P sources if 1) emissions are: \leq 250 tpy CO or NOx; 25 tpy VOCs, SO₂, PM₁₀ or any other pollutant ; 2) not subject to PSD or non-attainment NSR; 3) at least one unit at the site has been through public notification process; and 4) all conditions of a specific Standard Exemptions (SE #66 for E&P) are met.
 3. If a source can not meet all conditions of a standard exemption, it is required to obtain a permit (either a regular permit or a standard). There is a standard permit available for E&P sources. A standard permit is a "permit by rule". If an operator chooses to use the standard permit, he does not need to go through the public notification process, because it has been done during the rule-making.

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



BP EXPLORATION

BP Exploration (Alaska) Inc.
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(907) 561-5111

By Certified Mail # P423 342 031

February 21, 1997

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

*See J. Stone Hr.
(3/3/97) confirming
BPXA position
herein.*

Niakuk Development Drilling
Request for Determination on Air Permit Requirements

Dear Mr. Stone:

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

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

Nonroad Engine Definition

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



Mr. John Stone
February 21, 1997
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Over the past year BPX has participated in discussions with the ADEC suggesting that classification as a nonroad engine may be limited to 12 months at one location. We do not read the nonroad engine definition in 40 CFR 89.2 to limit self-propelled engines classified under (1)(i) to 12 months at a single location. Please advise if ADEC's interpretation differs from 40 CFR 89.2.

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

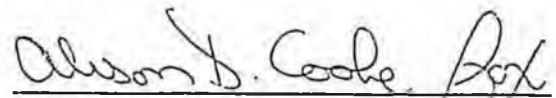
Nonroad Engine Applicable Requirements

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

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

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

Sincerely,



Janet D. Platt, Supervisor Compliance
Environmental and Regulatory Affairs

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

STATE OF ALASKA

JFK
TONY KNOWLES, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION

Division of Air and Water Quality
410 Willoughby Avenue, Suite 105
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March 3, 1997

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

Dear Ms. Platt:

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

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

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

Sincerely,



John M. Stone, Chief
Air Quality Maintenance Section

JMS/JFK/pal (b:\air\jkuterba\typing\platt.1c)

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

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

Karen Thomas

TONY KNOWLES, GOVERNOR

CC M. Berlinger
J. Turnbull
Labos
D. ...
Pool

DEPT. OF ENVIRONMENTAL CONSERVATION

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July 24, 1997

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

Dear Mr. Taylor:

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

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

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

- The owner or operator of a drilling operation needs a construction or operating permit if the operation is a facility requiring a permit by Alaska Statutes and regulations. By regulations effective January 18, 1997, we have exempted the emissions of non-road engines from being counted against the threshold quantities for permit applicability purposes. All other emissions sources are counted against the threshold quantities for permit applicability in accordance with 18 AAC 50.210. The federal analogue for this exemption is contained in 40 CFR 52.21(b)(4) and (b)(18).
- We have mutually agreed that in some cases the drilling contractors are required to obtain necessary permits; not the lease holder or the production facility operator. Additionally, the Department agrees to use EPA guidance when determining who must

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

- If a project requires a permit under the State's Prevention of Significant Deterioration Program (PSD), then the permit application must address the proposed drilling operations as required by State regulation. There are two scenarios for how the emissions are addressed. First, if a proposed drilling operation is under the common control or ownership of the permit applicant, then the emissions are part of the facility and must be considered in the application as described in 18 AAC 50.310(d)(1-4). Second, if a drilling operation will occur as a result of a project, but is not under the common control or ownership of the permit applicant, then the emissions from the drilling operation are considered associated growth. The emissions must be considered in the application as described in 18 AAC 50.310(d)(2) and (4). If emissions control from non-road engines is necessary to ensure that the project does not cause or contribute to a violation of the ambient standards or increments, then the Department can only impose "in-use" emission controls, such as restrictions on fuel quality and quantity. This is a result of 1990 changes in Section 209 of the 1990 Clean Air Act, and the interpretation of the section by EPA and the courts. *See Engine Manufacturers Ass'n v. U.S. Environmental Protection Agency*, 83 F.3d, 1075, 1093-94 (D.C. Cir. 1996).

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

- In situations where existing permits do not include authorization for historical drilling activities, the Department will use the approach set forth in our May 1, 1997 letter to you on Milne Point Pad E. This letter allowed you to continue the drilling operation pending expeditious submittal of the information required by the applicable regulations.
- In situations where a new drilling project causes a facility to need a non-PSD permit due to a modification of an existing facility, the Department will accept air pollution minimization measures for the drilling activity in lieu of an ambient impact compliance demonstration. The process for implementing this provision needs to be worked out with you.
- In situations where ambient impacts of drilling operations are assessed in PSD applications, we are willing to work closely with you to assure that all reasonable assumptions and dispersion enhancements are included in the analysis. As an example, our staff believe there are further refinements that can occur with the Milne Point application to reduce ambient impacts at low cost.

Mr. Steven Taylor

-3-

July 24, 1997

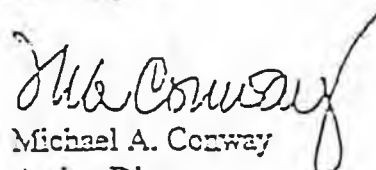
- In situations where all reasonable air pollution minimization efforts are proposed for drilling activities in a PSD application, yet a satisfactory ambient impact analysis cannot be made, the Department will consider other options, such as exclusion zones, in PSD permits.

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

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

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

Sincerely,


Michael A. Conway
Acting Director

MAC/JMS/pal (air/psd/psdill.wpd)

Enclosures

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

STATE OF ALASKA

Stone/Reading
 TONY KNOWLES, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION

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

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

September 23, 1997

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

Dear Ms. Thie:

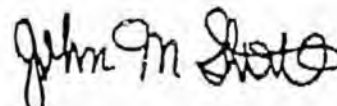
I would like to obtain EPA's opinion on a few new non-road engine issues. Your opinion is needed to provide guidance to Title V permit applicants, and to help us make changes to Alaska regulations to eliminate confusion over non-road engines.

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

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

Please let me know if you have any questions.

Sincerely,



John M. Stone, Chief
 Air Quality Maintenance Section

JMS/pal (h:\air\stone\stone.vpd)

Division of Air and Water Quality

410 Willoughby Avenue, Suite 105

Juneau, Alaska 99801-1795

Telephone: (907) 465-5100

Fax: (907) 465-5129

TTY: (907) 465-5010

December 29, 1997

Ms. Janet D. Platt

BP Explorations (Alaska), Inc.

P.O. Box 196612

Anchorage, AK 99516-6612

Re: Drill Rig Permitting Applicability

Dear Ms. Platt:

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

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

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

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

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

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

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

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

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

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

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

Sincerely,

John M. Stone, Chief

Air Quality Maintenance Section

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

Enclosure: December 15, 1997, letter to the IADC

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

Bill MacClarence, ADEC/AQM, Anchorage

Fairbanks ADEC/AQM File

Mike Krupa, IADC

Web Page

[ADEC Homepage](#) | [AQM Homepage](#) | [Org Chart](#) | [What's New](#) | [AQM Guidance](#)



THE ALASKA CHAPTER
OF THE
INTERNATIONAL
ASSOCIATION OF
DRILLING CONTRACTORS

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

RESOLUTION 98-1

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

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

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

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

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

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

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

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

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


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

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

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

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

Resolution 98-1 was adopted by a unanimous vote of the Board of Directors of the Alaska Chapter of the International Association of Drilling Contractors on the 16th day of March, 1998.

A handwritten signature in black ink, appearing to read "Michael L. Krupa", with a horizontal line underneath the name.

Mike Krupa
Director, Alaska Chapter



House Finance Committee

SUBJECT OF MEETING:

HB 272 AB 227
SB 299

DATE: April 7, 98

PLACE: Cap. 59

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?	WHAT SUBJECT/ WHICH BILL?
Sam Trivette	Corrections	260 Main St.			465-3343	<input checked="" type="radio"/> N	272
Al Ewing John Stone	ADEC	410 WILLAGHBY			465-5100	<input checked="" type="radio"/> N	299
Brian Kelly, Russ Douglas Kyle Parker	IADC					Y N	
Kirsten Shelton	AK Conservation Voice	4119 6th St.				<input checked="" type="radio"/> N	299
Pam LaBolle	State Chamber	217 Second St 204201			586-2323	<input checked="" type="radio"/> N	299
Kyle Parker						Y N	
Russ Douglas						Y N	
						Y N	
						Y N	
						Y N	
						Y N	

HAD TO
LEAVE

TELECONFERENCE
HOUSE FINANCE

APRIL 7

SB 299: WELL TEST FLARES & NONROAD ENGINES

OFFNETS

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

1-est

HB 227: CAPITAL IMPROVEMENT PROJECT AUTHORITY

OFFNETS

HENRY SPRINGER ANCHORAGE AGC 561-5354

04/07/98
14:08:17

LEGISLATIVE TELECONFERENCE NETWORK SYSTEM
PARTICIPANT LIST (TESTIFIERS ONLY)
TCN:80629 SCHEDULED FOR:04/07/98 13:30 TO 16:30
PUBLIC HEARING HOUSE FINANCE

LTN1150
BY:JNU
FOR:ALL

LOCATION:ANCHORAGE

✓ SB 299		PATTI	SAUNDERS - OPPOSED	TESTIFY
✓ SB 299		PAMELA	MILLER - OPPOSED	TESTIFY
✓ SB 299	AM. LEADNG PSSCC.	JAY	HERMANSON - OPPOSED	TESTIFY
✓ SB 299	CLEAN AIR COALITION	CHERYL	RICHARDSON	TESTIFY
✓ SB 299	1 AD TO LEAVE	JENNY	NORRIS	TESTIFY
✓ SB 299		MIKE	CUMBE	TESTIFY

LOCATION:FAIRBANKS

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

274-3639 ←



**THE ALASKA CHAPTER
OF THE
INTERNATIONAL
ASSOCIATION OF
DRILLING CONTRACTORS**

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

HAND DELIVERED

April 6, 1998

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

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

Dear Representative Phillips:

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

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

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

April 6, 1998 IADC letter
Re: SB 299, p. 2

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

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

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

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

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

April 6, 1998 IADC letter
Re: SB 299, p. 3

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

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

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

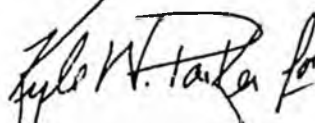
SB 299, which was introduced by Senator Loren Leman, is intended to codify in state statute the federally recognized distinction between mobile and stationary emission sources. Passage of SB 299 will prevent mobile sources from being permitted as stationary sources. SB 299 also will simplify the stationary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

The Alaska Chapter of the International Association of Drilling Contractors encourages your favorable consideration of SB 299. Please contact me, Russ Douglass (563.5500 x-22) or Kyle Parker (566.1220) should you have any questions regarding SB 299.

April 6, 1998 IADC letter
Re: SB 299, p. 4

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

Sincerely,

A handwritten signature in black ink, appearing to read "Chuck W. Sullivan for". The signature is written in a cursive, somewhat stylized font.

Chuck Sullivan
Director, Alaska Chapter
907.563.5530 x-22

Enclosures



THE ALASKA CHAPTER
OF THE
INTERNATIONAL
ASSOCIATION OF
DRILLING CONTRACTORS

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

RESOLUTION 98-1

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

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

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

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

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

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

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

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

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


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

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

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

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

Resolution 98-1 was adopted by a unanimous vote of the Board of Directors of the Alaska Chapter of the International Association of Drilling Contractors on the 16th day of March, 1998.


Mike Krupa
Director, Alaska Chapter

SB

299

THE

SEIN

SENATE FINANCE COMMITTEE REPORT

DATE: 3/23/98

FURTHER: ^{REPORTED OUT OF} 3/31/98

DATE TURNED
IN TO OFFICE: 3/31/98

Finance Committee considered SENATE BILL NO. 299

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

and recommends:

be replaced with _____ CS _____ (_____)

adopt previous _____ CS _____ (_____)

attached amendment(s)

adopt Letter of Intent by _____ Committee

further referral to the _____ Committee

Senate Bill:
 same title
 new title
House Bill:
 same title
 technical title
 new: SCR# _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
		<i>John E. Hill</i>	→		
		<i>Frank Stall</i>	✓		
		<i>Ag Adams</i>		X	
		<i>Foreman</i>	✓		
		<i>DeWolfe</i>	✓		
Co-Chair: <i>Deuce</i>	✓	Co-Chair:			
Co-Chair: <i>Ray King</i>	✓	Co-Chair:			

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

new F/N Forthcoming.				

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

FISCAL NOTE

3/31/98

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. SB 299

Revision Date: _____
Title: Well Test Flares and nonroad engines

Dept. Affected Environmental Conservation
BRU Air and Water
Component Air Quality

Sponsor: Leman
Requester: Senate Finance Committee

Component Serial No. 2061

Expenditures/Revenues

(Thousands of Dollars)

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

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES []						
------------------------	--	--	--	--	--	--

FUND SOURCE

(Thousands of Dollars)

FUND SOURCE	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
1002 Federal Receipts	0.0					
1003 GF Match	0.0					
1004 GF	12.0					
1005 GF/Program Receipts	0.0					
1037 GF/Mental Health	0.0					
1091 Designated Program Receipts	0.0					
TOTAL	11.6	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY97) cost: 0.0

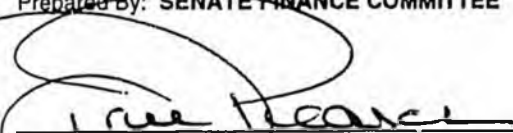
POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

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

Prepared By: SENATE FINANCE COMMITTEE


SENATOR DRUE PEARCE, CO-CHAIR

Date: 04/01/98
Phone: 465-4993


SENATOR BERT SHARP, CO-CHAIR

Date: 04/01/98
Phone: 465-3004

FISCAL NOTE

**STATE OF ALASKA
1998 LEGISLATIVE SESSION**

No. 1
BILL NO. Bill Version: SB299
 (S) Publish Date: 3/23/98

Revision Date (Note if correction) 3/18/98 Dept. Affected Environmental Conservation
 Title Well Test Flares and nonroad engines BRU Air and Water
 Component Air Quality
 Sponsor Senator Leman
 Requester Senate Resources Committee Component Serial No. 2061

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services	65.9	0.0	0.0	0.0	0.0	0.0
Travel	5.5	0.0	0.0	0.0	0.0	0.0
Contractual	11.6	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	83.0	0.0	0.0	0.0	0.0	0.0
<i>11.0</i>						
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

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

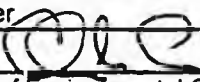
Estimate of any current year (FY98) cost: 0.0

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

See attached detail

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

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Analysis: Fiscal Note for SB 299

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

Regulation change cost breakdown

PCN 18-#028 w/indirect @ 9.86%	1.0 FTE	65.9
Travel	statewide	5.5
DOL review	50 hours @ 93.50	4.7
Advertising - public notices	5 papers/ twice/ @ \$300	3.0
Public hearings		
	room rental 4 @ \$250	1.0
	hearing officer 4 @ \$250	1.0
Publication of new regulations		1.9
		83.0

POSITION INFORMATION HAS BEEN UPDATED AND FUNDING HAS BEEN UPDATED.
03/18/98 Position Information Inquiry/Update Prior 15:02:21

	Yr Actual	Budgeted
Position: 18-18#028 Project: 0	0	44,772.00
Comp: 18-30-00-00-00-60 Region:	0	15,149.31
Scenario: 2 FY: 99 COLA %: 0.000	0	59,921.31
Total:	0	

Actuals not available (Status: UNKNOWN) FLSA: | Retirement Code: A

00/00/00	Step: B for 12.0 months & Step: C for 0.0 months (total: 12.00)
0	Merit Date; use merit defaults? N (0.0 @ & 0.0 @)
	Class/Sched Prefix: 2 Schedule: 2A (actual:)
	Bargaining Unit: GG Range: 18 (actual:)
	Location Code: AWA Place: JUNEAU
	Job Class Code: P8656 Title: ENV ENG ASSOCIATE
	Seasonal Indic.: F Type: -

Optional Override Salary Rates:

Monthly Rate: 0.00 for 0.0 months & rate of 0.00 for 0.0 months
 Hourly Rate: 0.00 for 0.0 months Frozen at this rate? (Y/N): N

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

0-LS1525VB
w/ new F/N
move Sen Phillips
objct Sen Adams
passed 6-1
set (Adams
on way)

SENATE BILL NO. 299

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY SENATOR LEMAN

Introduced: 2/12/98
Referred: Resources

A BILL

FOR AN ACT ENTITLED

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

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

6 * Section 1. AS 46.14 is amended by adding new sections to article 5 to read:

7 Sec. 46.14.570. Nonroad engines. Notwithstanding other provisions of this
8 chapter,

9 (1) nonroad engines and aggregated fuel burning equipment associated
10 with nonroad engines are mobile sources and are not considered to be facilities;

11 (2) an air quality control permit is not required under this chapter for
12 the operation of nonroad engines or aggregated fuel burning equipment associated with
13 nonroad engines;

14 (3) the emissions from and BTU per hour ratings of nonroad engines

1 and aggregated fuel burning equipment associated with nonroad engines may not be
2 considered by the department when determining the classification of a facility for
3 purposes of an air quality control permit under this chapter;

4 (4) the emissions from nonroad engines and aggregated fuel burning
5 equipment associated with nonroad engines may not be included by the department as
6 a part of an ambient air quality analysis; and

7 (5) a regulation that regulates emissions from or establishes an emission
8 standard for nonroad engines or aggregated fuel burning equipment associated with
9 nonroad engines may not be adopted by the department without the findings required
10 under AS 46.14.010(c) made in accordance with AS 46.14.015.

11 **Sec. 46.14.572. Well test flares.** Notwithstanding other provisions of this
12 chapter,

13 (1) well test flares are not considered to be facilities;

14 (2) an air quality control permit is not required under this chapter for
15 the operation of well test flares;

16 (3) the emissions from and BTU per hour ratings of well test flares
17 may not be considered by the department when determining the classification of a
18 facility for purposes of an air quality control permit under this chapter;

19 (4) the emissions from well test flares may not be included by the
20 department as a part of an ambient air quality analysis; and

21 (5) a regulation that regulates emissions from or establishes an emission
22 standard for well test flares may not be adopted by the department without the findings
23 required under AS 46.14.010(c) made in accordance with AS 46.14.015.

24 * **Sec. 2.** AS 46.14.990 is amended by adding new paragraphs to read:

25 (28) "nonroad engine" means an internal combustion engine, other than
26 an engine used to propel a motor vehicle or a vehicle used solely for competition or
27 an engine that is subject to federal standards adopted under 42 U.S.C. 7411 or 42
28 U.S.C. 7521, that

29 (A) is in or on a piece of equipment and that is self-propelled
30 or serves a dual purpose by both propelling itself and performing another
31 function;

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(B) is in or on a piece of equipment and that is intended to be propelled while performing its function; or

(C) by itself, or in or on a piece of equipment, is designed to be and is capable of being carried or moved from one location to another, except that an internal combustion engine described by this subparagraph is not considered to be a nonroad engine if it, or a similar engine or engines replacing that engine and intended to perform the same or similar function as the engine replaced, remains or will remain, at a location for a total of more than 12 consecutive months at a nonseasonal source or for the full annual operating period at a seasonal source; the exception in this subparagraph does not apply to the engine after it is removed from the location; in this subparagraph,

(i) "location" means a single site at a building, structure, facility, or installation;

(ii) "seasonal source" is a stationary source that remains in a single location for at least two years and that operates at that location for at least three months each year;

(29) "stationary source" means a source of air pollution other than emissions resulting from an internal combustion engine for transportation purposes, from a nonroad engine, or from a mobile source.

SB

306

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

DATE: 4/9/98

FURTHER: REPORTED 4/20/98

DATE TURNED
IN TO OFFICE: 4/21/98

Finance Committee considered

SENATE BILL NO. 306

"An Act to amend the law relating to child support orders, to amend the law relating to child support arrears, and to amend the law relating to child support enforcement, effective July 1, 1998."
SB 306 TAX EXEMPTIONS IN CHILD SUPPORT CASES

Support order as a
portion of child support

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS SB 306 (JUD)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

Senate Bill:

- same title
- new title
- House Bill:
- same title
- technical title
- new: SCR# _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>David D. Orley</i>	X	<i>Kell EC Hill</i>	✓		
		<i>Col McDaniel</i>	X		
		<i>John J. ...</i>	✓		
Co-Chair: <i>[Signature]</i>	✓	Co-Chair:			
Co-Chair: <i>[Signature]</i>	✓	Co-Chair:			

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

Revenue / CSED	2/29/98		25.4

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

4/20/98

Revision Date: April 20, 1998 Dept. Affected: Revenue
 Title: Tax Exemptions in Child Support Cases BRU: Child Support Enforcement Division
 Component: Child Support Enforcement Division
 Sponsor: Senator Donley
 Requestor: (S) FIN COMPONENT SERIAL NO. 111

Expenditures/Revenues: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
PERSONAL SERVICES	12.2	12.2	12.2	12.2	12.2	12.2
TRAVEL						
CONTRACTUAL	7.2	7.2	7.2	7.2	7.2	7.2
SUPPLIES						
EQUIPMENT	6.0					
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	25.4	19.4	19.4	19.4	19.4	19.4

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	16.8	12.8	12.8	12.8	12.8	12.8
1003 GF Match						
1004 GF	8.6	6.6	6.6	6.6	6.6	6.6
1001 CBRF						
1048 University of AK receipts						
Other						
TOTAL	25.4	19.4	19.4	19.4	19.4	19.4

Estimate of any current year cost \$ 0.0

POSITIONS:

FULL-TIME						
PART-TIME	1.0	1.0	1.0		1.0	1.0
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Senate Bill 306 would amend AS 25.27. The amendment would mandate that the Child Support Enforcement Division (CSED) certify, in writing, whether the case obligor is in arrears more than four times the monthly obligation, regardless of whether or not a payment schedule has been established. The information must be available to the custodial parent within 30 days of submitting a written request to obtain it.

This fiscal note is to cover a temporary employee and associated expenditures during tax months. This employee will certify the cases as requested.

Prepared by: Barbara Miklos, Director
 Division: Child Support Enforcement Division
 Approved by Commissioner: Wilson L. Condon
 Agency: Revenue

Phone: 269.6800
 Date: April 20, 1998
 Date: April 20, 1998

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Revision Date: _____ Dept. Affected: Revenue
 Title: Tax Exemptions in Child Support Cases BRU: Child Support Enforcement Division
 Component: Child Support Enforcement Division
 Sponsor: Senator Donley
 Requestor: (S) HES COMPONENT SERIAL NO. 111

Expenditures/Revenues: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
PERSONAL SERVICES	12.2	12.2	12.2	12.2	12.2	12.2
TRAVEL						
CONTRACTUAL	7.2	7.2	7.2	7.2	7.2	7.2
SUPPLIES						
EQUIPMENT	6.0					
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	25.4	19.4	19.4	19.4	19.4	19.4
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ()						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	16.8	12.8	12.8	12.8	12.8	12.8
1003 GF Match						
1004 GF	8.6	6.6	6.6	6.6	6.6	6.6
1001 CBRF						
1048 University of AK receipts						
Other						
TOTAL	25.4	19.4	19.4	19.4	19.4	19.4

Estimate of any current year cost \$ 0.0

POSITIONS:

FULL-TIME						
PART-TIME	1.0	1.0	1.0	1.0	1.0	1.0
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Senate Bill 306 would amend AS 25.27. The amendment would mandate that the Child Support Enforcement Division (CSED) certify, in writing, whether the case obligor is in arrears more than four times the monthly obligation, regardless of whether or not a payment schedule has been established. The information must be available to the custodial parent within 30 days of submitting a written request to obtain it. Rule 90.3, Alaska Rules of Civil Procedure would then be amended to entitle the custodial parent to claim the child(ren) as dependents for federal tax purposes (assuming they are entitled to do so under federal law and assuming accumulated arrearages in excess of four months.)

Prepared by: Barbara Miklos, Director
 Division: Child Support Enforcement Division
 Approved by Commissioner: Wilson L. Condon
 Agency: Revenue

Phone: 269-6800
 Date: February 20, 1998
 Date: February 20, 1998

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SB

312

HFIN

FILE

HOUSE COMMITTEE REPORT

(11)

Date Referred to Committee: May 5, 1998

FURTHER REFERRALS:

Date of Committee Action: 5/7/98

The FINANCE Committee considered:

SB 312

SENATE BILL NO. 312

FOOD/SEAFOOD/ORGANIC FOOD

“An Act relating to animals, to food, to pest control, and to the Alaska Food, Drug and Cosmetic Act; and providing for an effective date.”

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

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____

APPROVES PREVIOUS: (Dept/Date) _____

fiscal note(s) _____

fiscal note(s) _____

zero fiscal note(s) DNR

zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>Tom Theriault</i> Theriault	x			
<i>Tom Martin</i> martin	x			
<i>Mark Mulder</i> mulder			x	
<i>Jim Kohring</i> Kohring	x			
<i>J. Davies</i> J. Davies	x			
<i>Ben Gussendat</i> Gussendat			x	
<i>Carl E. Moses</i> Moses			x	
<i>g. Davis</i> g. Davis	x			
<i>Kelly</i> Kelly	x			

CHAIR'S SIGNATURE

Tom Theriault

 Theriault

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. SB312

Revision Date: 7-May-98 Dept Affected: Natural Resources
 Title: An Act relating to animals, to food, to pest control, and to the Alaska Food, Drug and Cosmetic act... BRU: Agricultural Development
 Sponsor: Sen. Wilkin by request Component: Agricultural Development
 Requestor: (H)FIN Component Serial No. 455

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY99	FY00	FY01	FY02	FY03	FY04
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES (fund code)	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY98) cost: \$ none

POSITIONS

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

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

Transfers those portions of Title 3 that are enforced by DEC to Title 17.

Transfers from Title 3 those portions of the organic food statutes that have been dealt with by DEC to Title 17.

Title 3 Agriculture organic food responsibilities are clarified.

Prepared by: Robert Wells, Director Phone: 745-7200
 Division: Agriculture Date: 7-May-98
 Approved by Commissioner: [Signature] Date: 5-7-98
 Agency: Natural Resources

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

No. 2
 Bill Version: SB312
 (S) Publish Date: 4/8/98

Revision Date: _____ Dept Affected: Natural Resources
 Title: FOOD/SEAFOOD/ORGANIC FOOD BRU: Agricultural Development
 Component: Agricultural Development
 Sponsor: Senator Wilken by Request
 Requestor: (S)L&C Component Serial No. #455

Expenditures/Revenues	(Thousands of Dollars)					
OPERATING EXPENDITURES	FY99	FY00	FY01	FY02	FY03	FY04
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0

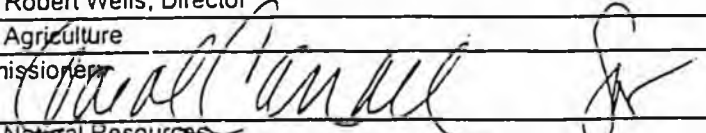
FUND SOURCE	(Thousands of Dollars)					
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY98) cost: \$ none

POSITIONS	FY99	FY00	FY01	FY02	FY03	FY04
FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

Removes those portions of Title 3 that have recently been enforced by DEC.
 Cuts the reindeer field kill inspection program and funding authorization.
 Removes from Title 3 those portions of the organic food statutes that have been dealt with by DEC. Takes DEC out of Title 3, organic.
 Rewords Title 3 Agriculture organic food responsibilities (need to define processed.)
 Adds Title 3 organic foods to Title 17.

Prepared by: Robert Wells, Director Phone: 745-7200
 Division: Agriculture Date: 10-Mar-98
 Approved by Commissioner:  Date: 3/10/98
 Agency: Natural Resources

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FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

No. 1
Bill Version: SB 312
(S) Publish Date: 4/8/98

Revision Date (Note if correction) 09-Mar-98 Dept. Affected Environmental Conservation
Title Food, Drug and Cosmetic Act BRU Environmental Health
Component Seafood and Sanitation
Sponsor Senator Wilken
Requester Senate Labor & Commerce Component Serial No. 1936

Expenditures/Revenues (Thousands of Dollars)

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

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY98) cost: 0.0

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

This legislation consolidates all food-related statutes into the Food, Drug and Cosmetic Act (AS 17.20). There is no fiscal impact.

Prepared by Janice Adair, Director Phone 269-7644
Division Environmental Health Date 3/9/98
Approved by Commissioner [Signature] Date 3/9/98
Agency Department of Environmental Conservation

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GARY WILKEN

SENATOR
Districts 29 & 30
West Fairbanks

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and Social Services (HESS)
Vice Chairman: Transportation
Vice Chairman: Community and
Regional Affairs

Special Committee

Member: Administrative Regulation Review

Alaska State Legislature

Senate

During Session:
State Capitol, Room 510
Juneau, Alaska 99801-1182
(907) 465-3709 (v)
(907) 465-4714 (f)
[www: akrepublicans.org/wilken.htm](http://www.akrepublicans.org/wilken.htm)
E-mail: Senator_Gary_Wilken@legis.state.ak.us

Interior:
119 N. Cushman St., Room 213
Fairbanks, Alaska 99701
(907) 452-3421
Fax (907) 452-3426

SB 312

An Act relating to domestic animals, to food, to pest control, and to the Alaska Food, Drug and Cosmetic Act, and providing for an effective date.

Sectional Analysis

SB 312 consolidates statutory provisions related to processed food in AS 17.20, the Alaska Food, Drug and Cosmetic Act. Currently, statutory provisions relating to food processing and food service are in Title 3, Animals and Agriculture, and in Title 17, Food and Drugs.

In addition, this legislation repeals some obsolete statutes relating to rabies, standards for bread and flour, and a pest control fund. Other minor changes are made to ensure Alaska's food laws comply with federal food laws or to resolve conflicts between different aspects of Alaska's food statutes. Finally, the legislation proposes to repeal language requiring the establishment of a state-funded field kill inspection program for reindeer.

The end result will find all food processing and service statutes in the Alaska Food, Drug and Cosmetic Act, making it easier for businesses that must follow these laws. It does not increase DEC's food processing authority at all.

Section 1. This amendment clarifies the Department of Environmental Conservation's authority to establish quarantines to eradicate diseases in livestock and brings this provision in statute in line with AS 03.45, Diseased Livestock.

Section 2. This section removes food-related duties of the commissioner of Environmental Conservation from Title 3, Animals and Agriculture. Some of these duties are moved to Title 17 while others are deleted.

- Page 1, lines 9 - 14 and page 2, lines 1 - 8 will be moved to Title 17 in Section 10 (page 6, lines 4 - 10) of this bill, except for authority to establish standards of identity and composition of food (page 1, lines 12 - 13). This provision already exists in current law at AS 17.20.010. Page 2, lines 17 - 28 will be consolidated and moved to Title 17 in Section 10 (page 6, lines 18 - 21).
- The language dealing with a field kill inspection program for reindeer at state expense on page 2, lines 29 - 31 and page 2, lines 1 - 2, is proposed for deletion.

Section 3. This amends the inspection requirements in Title 3 by removing all references to fish, aquatic farm products, and aquatic farm sites. These requirements are moved to Title 17 in Sections 14 and 17 of this bill.

Section 4. This amends the enforcement provisions of Title 3 by deleting all references to fisheries products. Title 17 already has a similar provision in existing law at AS 17.20.230.

Sections 5 and 6. Under current law, both DEC and DNR have the responsibility for ensuring that organic food is properly labeled. These sections of the bill delete the organic food statutes that are within the purview of DEC. They are reestablished in Title 17 by Section 9 of this bill. The statutory authorities for DNR remain in Title 3.

Section 7. This is a conforming amendment changing cross-references to the new cross-references in Title 17.

Section 8. This is also a conforming amendment changing the cross-references to Title 17.

Section 9. This section reinstates DEC's organic food authorities, which are deleted in Sections 5 and 6. This language is identical to existing law that can be found at AS 03.58.

Section 10. This is a new section in Title 17. It consists of language currently in Title 3, slightly reworded for context.

- The introductory paragraph (page 6, lines 4 - 6) is the same language currently found at AS 03.05.011.
- Page 6, lines 7 - 10 corresponds with the language deleted in Section 2 of the bill and provides the authority to inspect food products offered to the public as well as authority to set standards of sanitation and handling methods for

all phases of food production and sale.

- Page 6, line 11 is currently found at AS 03.05.011(a)(3), proposed for repeal in Section 26 of this bill. It provides the authority to establish food labeling requirements.
- Page 6, line 12 repeats the current AS 03.05.011(a)(2). The control and eradication of pests is critical for proper management of animals and agriculture as well as food products, therefore this language appears in both statutes.
- Page 6, lines 13 - 17 can be found in current law at AS 03.05.011(a)(8). (AS 03.05.011(a)(8) is repealed in Section 26.)
- Page 6, lines 18 - 21 is a restatement of language proposed for deletion in Section 2. It establishes the authority for standards for milk and milk products. In addition, this section will allow DEC to use the most current version of the U.S. Food and Drug Administration's Pasteurized Milk Ordinance (PMO) without the expense of the regulatory process to update the reference. Milk may not be sold in interstate commerce which includes sales to the military and other institutions that receive federal funding such as schools unless it meets the standards of the PMO. Dairies must follow the most recent version of the PMO by federal law, therefore this change will negate the possibility of the state using an older standard while the federal government uses a newer one, which could cause problems for our dairy producers.
- Page 6, lines 22 - 31 can be found in current law at AS 03.05.011(a)(9) and (10). (Both of these statutes are proposed for deletion in Section 26.) This language provides the authority to establish requirements for aquatic farms and aquatic farm products. In addition, subsection 7 allows the department to use the most current version of the National Shellfish Sanitation Program (NSSP) published by the Food and Drug Administration. Compliance with the NSSP is required before shellfish may be sold on the interstate market. This amendment will ensure compliance between the state's requirements and those of the federal government.
- Page 7, lines 1 - 2 can be found in current law at AS 03.05.011(a)(4), and provides the department with the ability to conduct tests or analyses or hold hearings to determine whether a stop order or quarantine needs to be issued. Because this is critical for proper management of animals and agriculture as well as food products, this language will appear in both statutes.

- Page 7, lines 3 - 4 is a restatement of language proposed for deletion in Section 2 of this bill. It provides the department with authority regarding quarantined or embargoed food products. The language has been updated to reflect the department's current practice of issuing notices of recalls and or warnings regarding quarantined or embargoed food products.
- Page 7, line 5 is taken from AS 03.05.011(5). It will continue to appear in Title 3, and is simply a statement of cooperation with the federal government and other state agencies.

Section 11. This is currently AS 03.05.035 (which will be deleted in Section 26 of this bill.) No changes are proposed to the existing language.

Section 12. Page 7, lines 18 - 31, and page 8, line 1 are in current law at AS 03.05.025 (which will be repealed in Section 26 of this bill). There is one minor change to the current language that will amend the state's current definition of "A critical control point" so it is the same as the federal definition. A comparison is attached.

Section 13. This is the same as current law that can be found at AS 03.05.026 and AS 03.05.085 (both are repealed in Section 26). This language is the same as existing law with only conforming amendments changing cross references to the new sections in Title 17.

Section 14. This reestablishes the inspection authority for "aquatic farms" in Title 17. In current law, this authority is in Title 3. (It is proposed for deletion from that title in Section 3 of this bill.)

Section 15. This is a conforming amendment to reflect the new sections in Title 17.

Section 16. This is a conforming amendment to reflect the new sections in Title 17.

Section 17. This relates to Section 14 and also eliminates statute language that is out of sync with current practice.

- Page 9, lines 16 - 23 is a companion amendment to that made in Section 14 adding "aquatic farms" to the inspection authority in Title 17. The current authority is in Title 3. (It is proposed for deletion in Section 3 of this bill.)
- Page 9, line 25 would delete the current requirement that DEC pay for food samples obtained for testing purpose to ensure the food is safe for consumption. The department does not pay for samples. Food processors

and other food establishments are equally interested in their products' safety and provide samples to the department for testing when necessary.

This deletion also impacts the Department of Health and Social Services by deleting the same requirement for that agency as it relates to testing drugs for safety.

Section 18. This is a conforming amendment.

Section 19. This is currently AS 03.05.090, and is being repeated in Title 17 to conform to the transfer of other food statutes from Title 3. It has been modernized to include "recalls" and adding "criminal negligence" as the state of mind necessary to find a violation of the statutes. ("Criminal negligence" is defined at AS 11.81.900(a)(4) as "when the person fails to perceive a substantial and unjustifiable risk that the result will occur or that the circumstance exists; the risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.")

Section 20. This is a conforming amendment.

Section 21. This is a conforming amendment.

Section 22. This is a conforming amendment.

Section 23. This is a conforming amendment.

Section 24. Currently, AS 03.04.100 has a different definition of "aquatic farm" than that found in AS 17.20.370. Section 25 of this bill moves the definition in Title 3 to Title 17. Therefore this section amends AS 17.20.370 to avoid conflicting definitions. The substance of the law is not changed.

Section 25. These definitions are moved from AS 03.05.100(2). (AS 03.05.100(2) is repealed in Section 26.)

Section 26. This is the repealer section. Some statutes are being repealed in Title 3 and readopted in Title 17, some are repealed because they already exist in Title 17, and others are being repealed completely. Please see the following breakdown:

Repealed and moved, or already in Title 17:
AS 03.05.011(a)(3), Powers of the Commissioner
AS 03.05.011(a)(7), Powers of the Commissioner
AS 03.05.011(a)(8), Powers of the Commissioner

AS 03.05.011(a)(9), Powers of the Commissioner
AS 03.05.011(a)(10), Powers of the Commissioner
AS 03.05.025, Seafood Permits
AS 03.05.026, Seafood Quality Standards
AS 03.05.035, Sale and Labeling of Frozen Food
AS 03.05.085, Seafood Processing Research
AS 03.05.100(2), Definition of Aquatic Farm and Aquatic Farm Products
AS 17.05.010, Sale of Unwholesome Provisions Prohibited
AS 17.05.020, Adulteration Prohibited

Repealed completely:

AS 03.05.070, Rabies (rabies control powers of the Department of Health and Social Services, coupled with the animal control powers of local governments, will continue)

AS 03.15.020, Purpose of appropriations (obsolete: this relates to appropriations from the Agriculture Pest and Disease Control Fund, which was repealed in 1968)

AS 17.05.050, Re-serving Prohibited (obsolete: safe re-service should be allowed.)

AS 17.07, Flour and Bread Standards (obsolete: currently regulated by the FDA; the State has authority to implement similar regulations, if necessary, under AS 17.20.010)

AS 17.20.210, Reimbursement for Expenses (obsolete: conflicts with procurement procedures promulgated by the Department of Administration)

AS 17.20.310, Penalties (obsolete: currently used language is in AS 03.05.090, which will be moved to Title 17 by Section 19 of the bill)

Section 27. This is standard language that allows any permits, regulations, embargoes, etc. done under current law to remain in effect despite the changes contained in this legislation.

Section 28. This is the effective date clause: July 1, 1998.

SB

313

HFIN

FILE

HOUSE COMMITTEE REPORT

(11)

Date Referred to Committee: April 19, 1998

FURTHER REFERRALS:

Date of Committee Action: 5/8/98

The FINANCE Committee considered:

SB 313

SENATE BILL NO. 313

PROCEDURES FOR INITIATIVES

"An Act relating to sponsor certification of initiative petitions; relating to sponsor identification during petition circulation; relating to the voidability of an initiated law; placing limitations on the compensation that may be paid to sponsors of initiative petitions; prohibiting payments to persons who sign or refrain from signing initiative petitions; and repealing procedures for filing a supplementary initiative petition."

recommends it be replaced the same title
 with the following committee substitute HCS CSSB 313(FIN) a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____ APPROVES PREVIOUS: (Dept/Date) _____
 fiscal note(s) _____ fiscal note(s) _____

zero fiscal note(s) _____ zero fiscal note(s) ^{Senate} Leut. Gov 3/19/95

SIGNING <u>WITH RECOMMENDATIONS</u>	DP	DNP	NR	AM
<i>Therriault</i> Therriault			x	
<i>Kohring</i> Kohring				x
<i>Mulder</i> Mulder			x	
<i>Grussendorf</i> Grussendorf			x	
<i>Kelly</i> Kelly			x	
<i>Moses</i> Moses			x	
<i>Davis</i> Davis			x	
<i>Davies</i> Davies				x

CHAIR'S SIGNATURE *Therriault*

Taking on California's initiatives law

■ "Paradise Lost: California's Experience, America's Future," by Peter Schrag (The New Press, \$25, 344 pp.)

Reviewed by JOHN MUNCIE
THE CALIFORNIA PRESS

California's at it again: another citizens' initiative, another end run around the state's legislature, another can of worms.

The story, which made the front page of the New York Times recently, must have forced a sigh of resignation from Peter Schrag. His new book, "Paradise Lost," is all about California's initiative process. It's his contention that initiatives, not earthquakes, are driving California into the sea.

California's initiative law was written into the state constitution in 1911. It was mostly forgotten until tax crusader Howard Jarvis, angered by what he considered a greedy, stalemated legislature, went directly to the voters. In 1978, he collected the requisite signatures and put Proposition 13, a stringent tax limitation measure, on the ballot. It passed easily.

"Prop 13," as it's universally called, has the same resonance in

California as, say, the term "Cosa Nostra" has in Sicily. You may hate it or swear allegiance to it, but Prop 13 is inescapable. Its ramifications are central to "Paradise Lost," which examines the state's socio-political history since its enactment.

In its first decade, Prop 13 saved taxpayers as much as \$228 billion and completely changed the state's financial underpinnings. Immediately, local agencies lost between \$6 billion and \$7 billion annually. The result: Social services were shot; the infrastructure crumbled; the school system was devastated. "Good-bye El Dorado," as Schrag titles one of his chapters.

Equally important, Prop 13 started a whole politics-by-initiative movement. Soon there were Prop 4 and 71 and 98 and 140. Props have targeted everything from affirmative action to immigration (the infamous Prop 187 of 1994). Since 1978, 40 initiatives have passed, many more have been defeated.

If all these numbers are giving you a headache, reading "Paradise Lost" may only increase the pain. The facts and figures come

in waves. Keeping track is like trying to surf a civics lesson.

This is a great shame. Even if Schrag overstates the impact of initiatives — they didn't cause the state's population to double since the '60s — "Paradise Lost" raises profound questions.

A longtime editorial page editor of the Sacramento Bee, Schrag has seen the initiative system, begun by populist reformers fighting railroad barons, become co-opted by political manipulators. "We will qualify a Constitutional Amendment ... in 45 days," brags one direct mail company.

Initiatives are pure democracy; citizens vote directly on the issues. It's a good idea, if you believe government is the problem. Schrag doesn't. When legislators are effectively cut out of the process, he says, so too are expertise, reasoned discourse and compromise.

California's history often becomes the nation's destiny. If "Paradise Lost" were a more focused, coherent book it might serve as a warning shot. This is more like a warning shout. Still, we'd be wise to listen.

05/03/98
John Muncie

SB-313. "AN ACT RELATING TO SPONSOR CERTIFICATION OF INITIATIVE PETITIONS; RELATING TO SPONSOR IDENTIFICATION DURING PETITION CIRCULATION; RELATING TO THE VOIDABILITY OF AN INITIATED LAW; PLACING LIMITATIONS ON THE COMPENSATION THAT MAY BE PAID TO SPONSORS OF INITIATIVE PETITIONS; PROHIBITING PAYMENTS TO PERSONS WHO SIGN OR REFRAIN FROM SIGNING INITIATIVE PETITIONS; AND REPEALING PROCEDURES FOR FILING A SUPPLEMENTARY INITIATIVE PETITION."

THIS IS WHAT SB-313 DOES:

- Prohibits buying signatures on an initiative petition.
- Prohibits "head hunting" paying initiative solicitors a fixed fee per signature. It does not prohibit hourly wage (minimum or higher).
- Eliminates the 30 day extension for initiative failing to obtain enough signatures at initial turn in time deadline. Current lateness of certification effectively removes the legislatures option of addressing the issue by statute.
- Requires initiative solicitor to wear an identification badge indicating their name and voter registration number. This will eliminate the current instances of over aggressive and intimidating initiative solicitors refusing to identify themselves.

"The name of the group circulating the petition and the name of the group paying for the petition, if different, shall both be prominently displayed in bold, capital letters, on the bottom of each signature page of the petition."

By Davies

Conceptual

Amendment

adopted

● **TALKING POINTS ON SB 313**

● **The problems:**

- Section 1 has two subsections that the Alaska courts may find as unconstitutional:
- Subsection (b) requiring initiative sponsors to wear ID badges when circulating a petition to obtain signatures; and
- Subsection (c) imposing a limit on the amount of money signature gatherers may be paid for obtaining signatures on initiative petitions.

● **Key elements:**

- Initiative petitions implicate "core political speech" entitled to the highest level of protection under the First Amendment to the United States Constitution.
- The ID badge issue is now on appeal to the United States Supreme Court in the case American Constitutional Law Foundation v. Meyer, 120 F.3d 1092 (10th Cir. 1997).
- The federal court of appeals found in Meyer that the ID badge requirement was unconstitutional, in violation of the First Amendment.
- The United States Supreme Court has already invalidated a state ban on payment to initiative signature gatherers - Meyer v. Grant, 486 U.S. 414 (1988), on First Amendment grounds.
- A strict limit on payment to signature gatherers raises similar constitutional issues, and could also be invalidated by the Alaska courts.

● **Recommendations**

- Amend SB 313 on page 1, at lines 9 -- 10 to delete proposed new subsection AS 15.45.110(b).
- Amend SB 313 on pages 1 and 2, at line 11--13, and page 2, lines 1 -- 2 to delete proposed new subsection AS 15.45.110(c).
- Make conforming amendments throughout SB 313 to remove cross-references to the two subsections deleted above.

LEGAL SERVICES

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

(907) 465-3867 or 465-2450
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130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

May 9, 1998

SUBJECT: Initiative petitions (HCS SB 313(FIN))

TO: Representative Gene Therriault
Attn: Louanne Christian

FROM: Richard A. Glover - *RAG*
Legislative Counsel

I forward the requested committee substitute for the referenced bill. I have attempted to draft the conceptual amendment to achieve what appears to be the intent to disclose the source of payment to sponsors of a petition. Please review the draft carefully to be sure I have interpreted your intent correctly.

The amendment to alter AS 15.45.110(c) may allow certain payments that you may not intend. Under the new text, "bonus" payments, i.e. "I agree to pay you \$1000 if you collect 100 signatures" could possibly be allowed, since payment is not based on a "per signature" calculation.

If I may be of further assistance, please advise.

RAG:glc
98-279.glc

Enclosure

AMENDMENT

#2
A
final

OFFERED IN THE HOUSE

BY

DAVIES

TO SB 313

Page 1, delete lines 9 - 10

Page 2, line 6, following "violates"

Delete "(b)"

Insert "(c)"

Page 3, delete lines 23 thru line 25.

AMENDMENT

OFFERED IN THE HOUSE

TO: SB 313

BY:

Muller

#1

Page 1, lines 11 - 13:

Delete all material

Insert "(c) A sponsor may not receive payment or agree to receive payment that is greater than \$1.00 per signature, and a person or an organization may not pay or agree to pay an amount that is greater than \$1.00 per signature, for the collection of signatures on a petition.

Page 2 lines 1 - 2

Delete all material.

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TYRANT

AMENDMENT

B

w/d

OFFERED IN THE HOUSE

BY

DAVID

TO SB 313

Page 1, line 11, delete thru page 2, line 2

Page 2, line 6, following "violates"

Delete "(b) - (d)"

Insert "(b) and (d)"

Page 2, line 20, following "signature,"

Delete "(6) the person has not entered into an agreement with a person or organization in violation of AS 15.45.110(c), and (7)"

Insert "and (6)"

Page 3, line 26, following "AS 15.45.110"

Delete "(c)"

Insert "(d)"

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130 Seward Street, Suite 409
Juneau, Alaska 99801-2103

MEMORANDUM

May 8, 1998

SUBJECT: Initiative petitions (SB 313)

TO: Senator Bert Sharp
Attn: Marilyn Wilson

FROM: Richard A. Glover - RAG -
Legislative Counsel

At your direction, I have reviewed the American Constitutional Law Foundation v. Meyer^{1/} case, and have conferred with Ms. Sarah Felix at the Department of Law. As I indicated in my earlier memos, restrictions on circulation of initiative petitions are a particularly troubling area of first amendment doctrine, and is an area that is not well settled. The American Con. Law Foundation case does indicate that the identification badges required by the Colorado law are unconstitutional as violative of first amendment protections of anonymous speech. The court did hold unconstitutional the aspects of the Colorado law that required the petition gatherers to make certain acknowledgments that the signatories of the petitions were verified subjectively to be qualified voters. Both of these issues are raised by SB 313.

The American Con. Law Foundation case is a 10th Circuit Court of Appeals case that has recently been granted certiorari by the U.S. Supreme Court. As such it is not currently controlling in our jurisdiction. However, I believe the State of Alaska is supporting the challenge to the 10th circuit court ruling to the U.S. Supreme Court, and, as always, it is uncertain how the court will decide.

The provisions of SB313 are not currently clearly unconstitutional, and there are significant factual differences between the Colorado statutory and constitutional requirements and the corresponding Alaska requirements which may serve to distinguish the holding in American Con. Law Foundation from the provisions of SB313. However, there is troubling language in that opinion, that if adopted by the U.S. Supreme Court, could defeat the provisions of SB313. I realize it is difficult to make the important policy decisions when the best legal advice available is that "we don't know," but in this case, I am afraid it is the best I can offer. If I may be of further assistance, please advise.

RAG:glc:jr
98-273.glc

^{1/}120 F. 3d 1092 (10th Cir. 1997), cert. granted in Buckley v. American Constitutional Law Foundation, Inc., 118 S.Ct. 1033 (U.S., Feb. 23 1998)



Official Business

Alaska State Senate

Senate Finance Committee

Mail Stop 3100
State Capitol
Juneau, Alaska 99801-1182

SPONSOR STATEMENT

SB-313

BY: SENATOR BERT SHARP

IT IS OFTEN ASSUMED THAT PERSONS OBTAINING SIGNATURES ON A BALLOT INITIATIVE ARE VOLUNTEERS WHO BELIEVE STRONGLY IN THEIR CAUSE. UNFORTUNATELY, THAT IS MORE OFTEN NOT THE CASE. INSTEAD, IT IS MORE LIKELY THESE SOLICITORS ARE SIGNATURE BOUNTY HUNTERS WHO ARE PAID BY THE SPONSOR OF THE INITIATIVE.

IN AN EFFORT TO BRING THE INITIATIVE PROCESS BACK TO A MORE GRASSROOTS EFFORT, SB-313 REQUIRES VISUAL IDENTIFICATION OF NAME AND A VOTER REGISTRATION IDENTIFICATION NUMBER OF THE PETITION CIRCULATORS AND ALSO PROHIBITS PAYMENT PER SIGNATURE BY THE SPONSOR.

THIS BILL ALSO PROHIBITS PAYING A PERSON TO SIGN A PETITION.

IN ADDITION, EXISTING LAW GRANTS A 30 DAY EXTENSION TO A SPONSOR IF THEY ARE UNSUCCESSFUL IN OBTAINING THE REQUIRED NUMBER OF VERIFIED SIGNATURES WITHIN THE ALLOWED TIME FRAME. SB-313 WILL ELIMINATE THIS 30 DAY EXTENSION. THIS WAY, IF THE REQUIRED NUMBER OF SIGNATURES ARE NOT SUCCESSFULLY OBTAINED, THE INITIATIVE SIMPLY DOES NOT APPEAR ON THE BALLOT.

THE FLURRY OF INITIATIVES THAT WE ARE CURRENTLY EXPERIENCING HAS RESULTED IN THE VERIFICATION OF SIGNATURES AND THUS QUALIFYING FOR THE BALLOT COMING AS LATE AS THE MIDDLE OF APRIL RESULTING IN ELIMINATING THE POSSIBILITY OF THE LEGISLATURE BEING ABLE TO REACT BY CRAFTING A SIMILAR STATUTE.

THE NUMBER OF INITIATIVES APPEAR TO BE GROWING AND THE RESULTS MAY WELL BE THE CALIFORNIZATION OF OUR ENTIRE LEGISLATIVE PROCESS.

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Juneau, Alaska 99801-2105

f the

MEMORANDUM

February 23, 1998

SUBJECT: Sectional Summary of SB 313

TO: Senator Bert Sharp
Attn: Marilyn Wilson

FROM: Richard A. Glover - *RAG*
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1 of the bill enacts a requirement for petition circulators to display identification. The section enacts a provision that prohibits payments to petition circulators if the payments are based on the number of signatures gathered. Payments to signatories of initiative petitions are also prohibited. A violation is made a class B misdemeanor.

Section 2 of the bill enacts additional requirements of petition sponsors filing initiative petitions. The sponsors must state in the filing affidavit (in addition to the current requirements) that the signatories are qualified voters, that no payments to the sponsor on a per signature basis were received or agreed to, and the sponsor did not pay or offer payment to signatories.

Section 3 of the bill makes technical corrections required by section 6 of the bill.

Section 4 of the bill makes a technical correction required by sec. 6 of the bill.

Section 5 of the bill makes acts of accepting, soliciting, or agreeing to accept payment for signing a petition, crimes of improper subscription to a petition.

Section 6 of the bill eliminates the provisions for supplemental initiative petitions, and repeals the statute that prohibits invalidation of an initiative based on an insufficiency of the initiative's application or petitions.

Senator Bert Sharp
February 23, 1998
Page 2

Section 7 of the bill specifies the applicability of the bill sections to conform to various constitutional requirements.

RAG:pl:jr
98-036.plm

S B

3 1 4

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

DATE: 3/20/98

FURTHER: 3/31/98

DATE TURNED
IN TO OFFICE: 3 April 98

Finance Committee considered

SENATE BILL NO. 314

"An Act relating to the Alaska marine highway system and to municipal feeder vessel authorities."

and recommends:

- be replaced with _____ CS SB 314 (FIN)
- adopt previous _____ CS _____
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

- Senate Bill:**
- same title
 - new title
- House Bill:**
- same title
 - technical title
 - new: SCR# _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>[Signature]</i>	<input checked="" type="checkbox"/>	<i>[Signature]</i>	X		
<i>[Signature]</i>	<input checked="" type="checkbox"/>	<i>[Signature]</i>	X		
		<i>[Signature]</i>	X		
Co-Chair: <i>[Signature]</i>	<input checked="" type="checkbox"/>	Co-Chair:			
Co-Chair: <i>[Signature]</i>	<input checked="" type="checkbox"/>	Co-Chair:			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal
DOT & PF, Commissioner	4/1/98		12.0

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

FISCAL NOTE

3/31/98

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. CSSB 314(FIN)

Revision Date: 3/31/98
Title: Municipal Feeder Vessel Authorities

Dept. Affected DOT & PF
BRU Statewide Programs
Component Office of the Commissioner

Sponsor: Torgerson, Pearne
Requester: Senate Finance Committee

Component Serial No. 530

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services	0.0					
Travel	0.0					
Contractual	12.0					
Supplies	0.0					
Equipment	0.0					
Land & Structures	0.0					
Grants & Claims	0.0					
Miscellaneous	0.0					
TOTAL OPERATING	12.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES []						
------------------------	--	--	--	--	--	--

FUND SOURCE

(Thousands of Dollars)

FUND SOURCE	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
1002 Federal Receipts	0.0					
1003 GF Match	0.0					
1004 GF	12.0					
1005 GF/Program Receipts	0.0					
1037 GF/Mental Health	0.0					
1091 Designated Program Receipts	0.0					
TOTAL	12.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY97) cost: 0.0

POSITIONS


Full-time						
Part-time						
Temporary						

ANALYSIS:

(Attach a separate page if necessary)

The cost for developing these regulations is estimated to be \$12,000. Advertising expenses (\$4,000), Department of Law expenses (\$3,000), travel costs to hold public hearings (\$2,000), and miscellaneous expenses such as teleconferencing and printing (\$3,000).

Prepared By: SENATE FINANCE COMMITTEE


SENATOR DRUE PEARCE, CO-CHAIR

Date: 04/01/98
Phone: 465-4993


SENATOR BERT SHARP, CO-CHAIR

Date: 04/01/98
Phone: 465-3004