

**ALASKA LEGISLATURE**

**2525**

**HOUSE and SENATE FINANCE COMMITTEE FILES, 2003-2004**

**HB**

**159**

**HFIN**

**FILE**



# FISCAL NOTE

**STATE OF ALASKA**  
**2003 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB 159  
 () Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: DCED  
 Title Financial Institutions/Examinations/CFAB BRU Banking, Securities & Corporations (115)  
 Component Banking, Securities & Corporations  
 Sponsor Rules by Request of the Governor  
 Requester House Labor & Commerce Component No. 1233

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services	(75.0)					
Travel	(3.0)					
Contractual	(48.0)					
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>(126.0)</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
<b>CHANGE IN REVENUES ( 51137 )</b>	<b>(25.0)</b>					

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>(126.0)</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2003) cost: 126.0  
 Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

**POSITIONS**

Full-time	-1					
Part-time						
Temporary						

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

This legislation changes the frequency of examinations of people licensed under the Alaska Small Loans Act (AS 06.20), and repeals the requirement for a state examination and evaluation of the Alaska Commercial Fishing and Agriculture Bank (CFAB).

CHANGE IN REVENUE: We anticipate a loss of \$25.0 in revenue as a result of examination fees no longer collected.

Prepared by: Mark Davis, Director Phone 907-269-8452  
 Division Banking, Securities & Corporations Date/Time 3/6/03 3:41 PM  
 Approved by: Edgar Blatchford, Commissioner Date 3/6/2003  
 Agency Department of Community & Economic Development

Amended 3-4

## AMENDMENT 1

TO BE OFFERED IN THE HOUSE FINANCE COMMITTEE

BY REPRESENTATIVE CROFT

TO: HB 159

Page 1, Line 13, DELETE:

“\* Sec.2. AS 44.81.270(d) is repealed.”

Renumber accordingly

*This amendment keeps the requirement for CFAB to submit to annual bank examinations. The argument for not holding CFAB to this standard is the perception that the requirement is overly redundant, that CFAB is subject to independent audit or legislative audit, should one be requested.*

*CFAB puts forth that the requirement is not overly redundant; that the independent audit only looks at their financial situation, and the bank examiners make sure CFAB is adhering to statute. CFAB argues the bank examinations help them with their accountability to their board (two members of which are appointed by the Governor) and their members and CFAB pays for the examination.*

*Although the Legislature could request Legislative Budget and Audit to conduct a bank examination, it does not happen on a regular basis. The last one occurred in 1995.*

House Finance Committee Vote Sheet

DATE: 3/27/03

SUBJECT: HB 159 - Amendment #1

MEMBER YES NO

JOULE	✓	
MEYER		✓
<del>MOSES</del>		
STOLTZE		✓
WHITAKER		✓
<del>CHENAULT</del>		
CROFT	✓	
FOSTER		✓
HAWKER		✓
HARRIS	✓	
WILLIAMS		✓
TOTAL:		

PASSED: 3

FAILED: 6

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



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

HB159  
P.O. Box 110001  
JUNEAU, ALASKA 99811-0001  
(907) 465-3500  
FAX (907) 465-3532  
WWW.GOV.STATE.AK.US

March 5, 2003

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

Dear Speaker Kott:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that would give the Department more flexibility with regard to the frequency of examinations of financial institutions and the Alaska Commercial Fishing and Agriculture Bank.

Changing the date of frequency of examinations of Small Loan Companies from 12 months to 18 months will bring the schedule for the examinations in line with the rest of the banking code and eliminate the need for additional bank examiners. The bill also eliminates the Division of Banking, Securities, and Corporations' examination of the Commercial Fishing and Agriculture Bank (CFAB). This examination is unnecessary, because CFAB is required by statute to be audited annually by independent auditors and is subject to legislative audit.

I urge your prompt and favorable action on this measure.

Sincerely,

A handwritten signature in black ink that reads "Frank H. Murkowski".

Frank H. Murkowski  
Governor

**HB159**  
**Financial Institutions/Commercial Fisheries Agriculture Board (CFAB)**

**Testimony by Mark Davis, Director**  
**Division of Banking, Securities & Corporations**  
**Alaska Department of Community & Economic Development**  
**to the**  
**House Finance Committee**  
**26 March 2003**

- On behalf of Governor Murkowski and Commissioner Blatchford, I want to thank the committee for promptly scheduling a hearing of HB159 Financial Examinations/CFAB.
- The proposed bill makes two changes to the banking code.
- The first change extends the frequency of the Division's examinations of Small Loan Companies from 12 to 18 months.
- This change will bring the schedule for the examinations in line with the rest of the banking code and will eliminate the need for an additional bank examiner.
- It will not affect the integrity of the examinations, and the Division will follow its policy that it can examine a Small Loan Company more frequently if that is deemed advisable.
- The second change discontinues the Division's annual examination of the Alaska Commercial Fishing and Agricultural Bank (CFAB).
- CFAB presently receives no State funds and does not accept deposits from the public, as do banks, and credit unions.
- CFAB operates essentially as a cooperative for the benefit of its members, and is required by statute to prepare annually an audit by an independent outside auditor. This report is provided to the legislature.
- HB 159 does not change the fact that by statute CFAB will continue to be subject to a legislative audit.
- In view of the fact that CFAB has paid back all of its state funding, is not a bank lending to the public and is subject to both an independent audit and a legislative audit, an examination by the Division of Banking, Securities and Corporations is unnecessary.
- Banking's operational costs for FY03 are estimated at \$635,069 and revenue generated is estimated to be \$276,000. This will result in costs in excess of revenues to the amount of \$359,000.

**History on CFAB Examination**

- The Division was invited to examine CFAB on April 29, 1985 to report about the viability of CFAB funding at the request of CFAB's source of funding, the Spokane Bank for Cooperatives.
- Thereafter, Alaska Statutes pertaining to CFAB were amended in 1987 to require an annual examination by division examiners.

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March 19, 2003

Lela E. Klingert  
*President*

The Honorable Frank Murkowski  
Governor, State of Alaska  
Post Office Box 110001  
Juneau, Alaska 99811-0011

Dear Governor Murkowski,

We have reviewed House Bill 159 and Senate Bill 113, each introduced by the respective Rules Committee at your request.

We note that Section 2 of each bill provides for the repeal of AS 44.81.270(d), which authorizes and directs annual examination of the Alaska Commercial Fishing and Agriculture Bank. This is problematic to us, and we are wondering if a modified approach might be crafted; one which would support the bills' purposes and intents while continuing to meet the needs of CFAB and other interested parties.

To that end, we would offer the following points of perspective. They may seem somewhat lengthy, but our purposes are (1) to provide sufficient information to permit full consideration of an alternate approach; and (2) to emphasize that the examination function has been extremely useful to CFAB and its resident member-owners.

AS 44.81.270(d) was the result of 1987 legislation. CFAB had begun operations in early 1980. By the end of 1984, and into 1985, it had become clear that cumulative losses and other effects of inappropriate credit judgments and practices threatened CFAB's failure. During the late '80's, and into the early 90's, CFAB was "in recovery." (At that time, the State of Alaska owned \$32.0 million of CFAB's preferred stock.) Among the ancillary effects of the publicity and perceptions concerning CFAB's circumstances were the generally unfounded yet understandable allegations of a wide range of improprieties within CFAB and the expressed frustrations that "nobody knows what the real story is." These emanated from both the legislative and executive branches, as well as from member-owners, competing lenders, and various media, etc.

Thus, one of the practical, and successful, purposes of the 1987 legislation was establishment of a process by which a professional, credible, and independent

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*Alaska Commercial Fishing and Agriculture Bank*

(907) 276-2007 • Fax (907) 279-7913 • 2550 Denali St., Suite 1201 • Anchorage, Alaska 99503

The Honorable Frank Murkowski

March 19, 2003

Page 2

periodic evaluation of CFAB's loan/asset quality, management, practices, and statutory compliance may be submitted to authorized and interested parties. Over the years many examination reports - or elements thereof - have been noted by, or discussed with, a range of administrators, legislators, lenders, and others. Those examination reports have proven to be extremely useful.

Quite often the value of a safeguard, or a safety element such as a fire extinguisher, may become "invisible" because it has never been called upon. That may be the case here. CFAB has the statutory authority, unique among private lenders, to acquite and administer a consensual lien on a Commercial Fisheries Limited Entry Permit. CFAB has always exercised this authority within a context of fiduciary responsibility, and has attempted to adhere to the spirit, as well as the letter, of the comprehensive statutory limitations. There has never been a sustained, or even substantial, suggestion of CFAB failure in this regard.

Notwithstanding the foregoing, it should not be overlooked that the annual examination has been a most effective means of oversight of this area, and AS 44.81 in general, for the benefit and protection of the thousands of Alaska residents potentially affected. Similarly, these examinations have provided an element of protection for those Alaska residents who are the collective owners of over \$19.0 million of CFAB equity. This is not unlike the efforts undertaken by the State to protect the depositors and/or owners of other institutions.

We note the suggestion that the annual examination is redundant to the statutorily-mandated financial audit. However, those processes encompass significantly different professional disciplines and emphases, and are complementary to each other. Simply put, an examination is focused on the quality/value of assets, whereas an audit is concerned primarily with appropriate accounting for the assets and liability of the subject. If CFAB makes a \$100,000 loan to Bill Jones, who confirms to the auditors that he indeed owes CFAB \$100,000, the auditors are satisfied that \$100,000 has been accounted for. However, the examiners' process is concerned with whether or not it made professional sense for CFAB to make the loan, and with whether or not Bill Jones has the intent and capacity to repay.

We do not consider the annual audit and annual examination, each of which we value, to be at all redundant. For over 15 years CFAB's management has viewed the annual examination to be a necessary and valuable check on its own analyses and judgments. Its officers, while not lacking in confidence, have welcomed the scrutiny of objective and professional eyes. In short, the examination has proved a valuable tool in assuring the effective management of CFAB, to the benefit of Alaska residents. Similarly, CFAB's Board of Directors has utilized the examination and the resultant report and examiners' presentation as an element of its ongoing evaluation of

The Honorable Frank Murkowski  
March 19, 2003  
Page 3

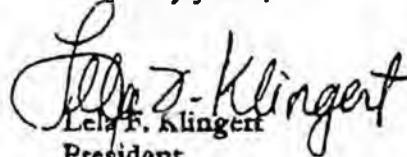
management, in keeping with the Board's fiduciary duty to member-owners. Finally, CFAB's lender - without which CFAB could not function - has clearly viewed the annual examination as an important element of its evaluation of CFAB's creditworthiness.

Your letters transmitting HB 159 and SB 113 suggest that certain fiscal objectives will be served through passage of this legislation. Obviously, we have no insight into the agency finances involved, and would not presume to offer comments in that regard. Neither would we suggest that a reduction in agency net expense is inappropriate. However, we are somewhat confused as to the relevance of AS 44.81.270(d) to that issue. Through 1992 CFAB, like each other state-chartered financial institution, was charged a maximum of \$7,500 (or actual costs, if less) for each examination. Beginning in 1993, premised on a change in the relevant statute, CFAB has been charged - and has paid - what has been expressed as the "actual costs" of each examination. CFAB has paid a total of \$117,684 for the ensuing examinations - an average of \$11,768, with a high of \$16,338 and a low of \$6,308. If those charges have indeed reflected the actual costs of examination, it is difficult to understand how a cessation of those examinations will have a significant fiscal impact.

As a closing observation, we would like to assure that a modification of the required examination interval to 18 months, as your bills provide for other non-banking entities, would be a workable approach from CFAB's standpoint.

Governor Murkowski, we are somewhat troubled at the appearance of "opposing" your legislation; we would have preferred an earlier discussion. CFAB is a private cooperative institution with unique purposes, authorities, foundation, and history, and is charged with serving a public interest. We believe that routine professional examinations are an important element for the protection of the State, the public, the cooperative, and its member-owners. And, of course, CFAB is willing to continue to pay its own way on the same bases as in the past.

Very truly yours,

  
Leif F. Klingert  
President

**HB**

**159**

SFIN

FILE

# SENATE FINANCE COMMITTEE REPORT

DATE: 4/14/03

REPORTED OUT  
APR 22 2003  
SENATE FINANCE  
COMMITTEE  
HOUSE BILL NO. 159

FURTHER:

DATE TURNED IN TO OFFICE: 4/22/03

Finance Committee considered

## HB 159 FINANCIAL INSTITUTION EXAMINATIONS/CFAB

"An Act relating to the frequency of examinations of certain persons licensed to engage in the business of making loans of money, credit, goods, or things in action; repealing the requirement for a state examination and evaluation of the Alaska Commercial Fishing and Agriculture Bank; and providing for an effective date."

and recommends:

- be replaced with \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- adopt previous \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to \_\_\_\_\_ Committee

**Senate Bill:**

- same title
- new title

**House Bill:**

- same title
- technical title
- new: SCR # \_\_\_\_\_

**NEW FISCAL NOTE(S):**

Department	Date	Fiscal	Zero	FN#

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Zero	FN#
DCED	3/27/03	✓		2

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	No REC	AMEND
<i>John H. Taylor</i>			✓	
<i>[Signature]</i>				
<i>[Signature]</i>			✓	
<i>[Signature]</i>	✓			
<i>[Signature]</i>	✓			
COCHAIR: <i>[Signature]</i>			✓	
COCHAIR: <i>[Signature]</i>	✓			

HOUSE BILL NO. 159

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY THE HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 3/5/03

Referred: Labor and Commerce, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the frequency of examinations of certain persons licensed to engage  
2 in the business of making loans of money, credit, goods, or things in action; repealing the  
3 requirement for a state examination and evaluation of the Alaska Commercial Fishing  
4 and Agriculture Bank; and providing for an effective date."

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

6 \* Section 1. AS 06.20.170 is amended to read:

7           Sec. 06.20.170. Periodic [ANNUAL] examination. The department shall  
8           examine the affairs, business, office, and records of each licensee at least once every  
9           18 months [EACH YEAR]. Examination fees are to be charged to and paid by the  
10           licensee in accordance with AS 06.01.010. The department may maintain an action  
11           for the recovery of the costs in any court of competent jurisdiction, with recourse to  
12           the bonds referred to in AS 06.20.050 and 06.20.080.

13 \* Sec. 2. AS 44.81.270(d) is repealed.

14 \* Sec. 3. This Act takes effect July 1, 2003.

# FISCAL NOTE

REPORTED OUT

APR 22 2003

STATE OF ALASKA  
2003 LEGISLATIVE SESSION

Fiscal Note Number:  
Bill Version:  
(H) Publish Date:

2 SENATE FINANCE  
HB 159  
3/28/03

Revision Date/Time (Note if correction): 03-27-03 Dept. Affected: DCED  
 Title Financial Institutions/Examinations/CFAB BRU Banking, Securities & Corporations (115)  
 Component Banking, Securities & Corporations  
 Sponsor Rules by Request of the Governor  
 Requester House Labor & Commerce Component No. 1233

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services	(75.0)					
Travel	(3.0)					
Contractual	(48.0)					
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>(126.0)</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
<b>CHANGE IN REVENUES ( 51137 )</b>	<b>(25.0)</b>					

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1156 Receipt Supported Services	(126.0)	0.0	0.0	0.0	0.0	0.0
<b>TOTAL</b>	<b>(126.0)</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2003) cost: 126.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

**POSITIONS**

Full-time	-1					
Part-time						
Temporary						

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

This legislation changes the frequency of examinations of people licensed under the Alaska Small Loans Act (AS 06.20), and repeals the requirement for a state examination and evaluation of the Alaska Commercial Fishing and Agriculture Bank (CFAB).

**CHANGE IN REVENUE:** We anticipate a loss of \$25.0 in revenue as a result of examination fees no longer collected.

Prepared by: Mark Davis, Director Phone 907-269-8452  
 Division Banking, Securities & Corporations Date/Time 3/27/03 9:00 AM  
 Approved by: Edgar Blatchford, Commissioner Date 3/27/2003  
 Agency Department of Community & Economic Development

Frank H. Murkowski, Governor

# Alaska Department of Community and Economic Development

## Office of the Commissioner

P.O. Box 110800, Juneau, AK 99811-0800

Telephone: (907) 465-2500 • Fax: (907) 465-5442 • Text Telephone: (907) 465-5437

Email: questions@dced.state.ak.us • Website: www.dced.state.ak.us/

April 3, 2003

The Honorable Gary Wilken, Co-Chair  
The Honorable Lyda Green, Co-Chair  
Senate Finance Committee  
Alaska State Legislature  
State Capitol  
Juneau, AK 99801-1182

SB 113 is the companion  
bill to HB 159.

Re: SB113 "An Act relating to the frequency of examinations of certain persons licensed to engage in the business of making loans of money, credit, goods, or things in action; repealing the requirement for a state examination and evaluation of the Alaska Commercial Fishing and Agriculture Bank; and providing for an effective date."

Dear Senator Wilken and Senator Green:

Senate Bill 113 was introduced by the Governor through the Senate Rules Committee. This legislation makes two changes: it extends the frequency of the Division's examinations of small loan companies from 12 to 18 months, and it discontinues the Division's annual audit of the Alaska Commercial Fishing and Agricultural Bank (CFAB).

These changes will bring the schedule for examining small loan companies in line with the rest of the banking code, eliminate the statutory requirement for the CFAB examination, and will, in turn, eliminate the need for an additional bank examiner, saving a total of \$126.0.

CFAB would like the Division to continue its examination. In light of the fact that CFAB has paid back all of its state funding, is not a bank lending to the public, and is subject to both an independent audit and a legislative audit, the Department believes the examination by the Division of Banking, Securities and Corporations is unnecessary.

The companion House Bill 159 has been referred to the Rules Committee and we hope the bill will be heard on the House floor and transmitted to the Senate next week.

We respectfully request that you schedule SB113 for a hearing in your committee, and we urge favorable action on this bill. We will be happy to meet with you and other members of the committee to provide any further information you may require. Thank you for considering our request.

Sincerely,



Edgar Blatchford  
Commissioner

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Lela F. Klingert  
*President*

March 19, 2003

The Honorable Frank Murkowski  
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Post Office Box 110001  
Juneau, Alaska 99811-0011

Dear Governor Murkowski,

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To that end, we would offer the following points of perspective. They may seem somewhat lengthy, but our purposes are (1) to provide sufficient information to permit full consideration of an alternate approach; and (2) to emphasize that the examination function has been extremely useful to CFAB and its resident member-owners.

AS 44.81.270(d) was the result of 1987 legislation. CFAB had begun operations in early 1980. By the end of 1984, and into 1985, it had become clear that cumulative losses and other effects of inappropriate credit judgments and practices threatened CFAB's failure. During the late '80's, and into the early 90's, CFAB was "in recovery." (At that time, the State of Alaska owned \$32.0 million of CFAB's preferred stock.) Among the ancillary effects of the publicity and perceptions concerning CFAB's circumstances were the generally unfounded yet understandable allegations of a wide range of improprieties within CFAB and the expressed frustrations that "nobody knows what the real story is." These emanated from both the legislative and executive branches, as well as from member-owners, competing lenders, and various media, etc.

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*Alaska Commercial Fishing and Agriculture Bank*

(907) 276-2007 • Fax (907) 279-7913 • 2550 Denali St., Suite 1201 • Anchorage, Alaska 99503

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The Honorable Frank Murkowski  
March 19, 2003  
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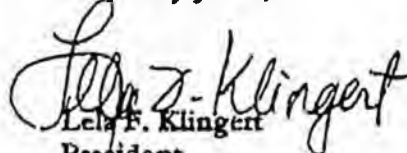
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Very truly yours,

  
Lela F. Klingert  
President

## **HB159**

### **Financial Institutions/Commercial Fisheries Agriculture Bank (CFAB)**

**Testimony by Mark Davis, Director  
Division of Banking, Securities & Corporations  
Alaska Department of Community & Economic Development  
to the  
Senate Finance Committee  
17 April 2003**

- On behalf of Governor Murkowski and Commissioner Blatchford, I want to thank the committee for promptly scheduling a hearing of HB159 Financial Examinations/CFAB.
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- The second change discontinues the Division's annual examination of the Alaska Commercial Fishing and Agricultural Bank (CFAB).
- CFAB presently receives no State funds and does not accept deposits from the public, as do banks, and credit unions.
- CFAB operates essentially as a cooperative for the benefit of its members, and is required by statute to prepare annually an audit by an independent outside auditor. This report is provided to the legislature.
- HB159 does not change the fact that by statute CFAB will continue to be subject to a legislative audit.
- In view of the fact that CFAB has paid back all of its state funding, is not a bank lending to the public and is subject to both an independent audit and a legislative audit, an examination by the Division of Banking, Securities and Corporations is unnecessary.
- Banking's operational costs for FY03 are estimated at \$635,069 and revenue generated is estimated to be \$276,000. This will result in costs in excess of revenues to the amount of \$359,000.

#### **History on CFAB Examination**

- The Division was invited to examine CFAB on April 29, 1985 to report about the viability of CFAB funding at the request of CFAB's source of funding, the Spokane Bank for Cooperatives.
- Thereafter, Alaska Statutes pertaining to CFAB were amended in 1987 to require an annual examination by division examiners.

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



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

HB159  
P.O. Box 110001  
JUNEAU, ALASKA 99811-0001  
(907) 465-3500  
FAX (907) 465-3532  
WWW.GOV.STATE.AK.US

March 5, 2003

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

Dear Speaker Kott:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that would give the Department more flexibility with regard to the frequency of examinations of financial institutions and the Alaska Commercial Fishing and Agriculture Bank.

Changing the date of frequency of examinations of Small Loan Companies from 12 months to 18 months will bring the schedule for the examinations in line with the rest of the banking code and eliminate the need for additional bank examiners. The bill also eliminates the Division of Banking, Securities, and Corporations' examination of the Commercial Fishing and Agriculture Bank (CFAB). This examination is unnecessary, because CFAB is required by statute to be audited annually by independent auditors and is subject to legislative audit.

I urge your prompt and favorable action on this measure.

Sincerely,

A handwritten signature in cursive script that reads "Frank H. Murkowski".

Frank H. Murkowski  
Governor

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



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March 5, 2003

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Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that would give the Department more flexibility with regard to the frequency of examinations of financial institutions and the Alaska Commercial Fishing and Agriculture Bank.

Changing the date of frequency of examinations of Small Loan Companies from 12 months to 18 months will bring the schedule for the examinations in line with the rest of the banking code and eliminate the need for additional bank examiners. The bill also eliminates the Division of Banking, Securities, and Corporations' examination of the Commercial Fishing and Agriculture Bank (CFAB). This examination is unnecessary, because CFAB is required by statute to be audited annually by independent auditors and is subject to legislative audit.

I urge your prompt and favorable action on this measure.

Sincerely,

A handwritten signature in cursive script that reads "Frank H. Murkowski".

Frank H. Murkowski  
Governor



**HB**

**160**

**HFIN**

**FILE**

# STATE OF ALASKA

FRANK H. MURKOWSKI, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION  
OFFICE OF THE COMMISSIONER

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

March 18, 2003

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

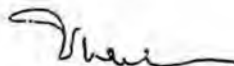
Dear Representative Williams:

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

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

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

Sincerely,



Ernesta Ballard  
Commissioner

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

# LEGAL SERVICES

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

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

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

## MEMORANDUM

March 27, 2003

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

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

**FROM:** Terri Lauterbach  
Legislative Counsel *TLauterbach*

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

TML:mdr  
03-039.mdr

Enclosure

# FISCAL NOTE

STATE OF ALASKA  
2003 LEGISLATIVE SESSION

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

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

**Expenditures/Revenues** (Thousands of Dollars)

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

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

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

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

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

**POSITIONS**

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

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

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

## Personal Services New Position Detail

### Department of Environmental Conservation

Scenario: All Fiscal Notes - DEC FY2004 (3085)

Component: Air Quality (2061)

BRU Name: Air and Water Quality (206)

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

**Justification:**

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

**Funding Detail:**

1093	Clean Air Protection Fund	100.00%	63,469
<b>Total Funding:</b>		100.00%	63,469

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

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

**Funding Detail:**

1093	Clean Air Protection Fund	100.00%	71,634
<b>Total Funding:</b>		100.00%	71,634

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

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

**Funding Detail:**

1093	Clean Air Protection Fund	100.00%	72,747
<b>Total Funding:</b>		100.00%	72,747

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

## Personal Services New Position Detail

### Department of Environmental Conservation

Scenario: All Fiscal Notes - DEC FY2004 (3085)

Component: Air Quality (2061)

BRU Name: Air and Water Quality (206)

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

**Justification:**

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

**Funding Detail:**

1093	Clean Air Protection Fund	100.00%	71,634
<b>Total Funding:</b>		100.00%	71,634

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

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

**Funding Detail:**

1093	Clean Air Protection Fund	100.00%	74,195
<b>Total Funding:</b>		100.00%	74,195

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

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

**Funding Detail:**

1093	Clean Air Protection Fund	100.00%	71,634
<b>Total Funding:</b>		100.00%	71,634

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

**Personal Services New Position Detail**

Department of Environmental Conservation

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

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

**Justification:**

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

**Total New Positions:** 7

**Funding Detail:**

1093	Clean Air Protection Fund	100.00%	81,973
<b>Total Funding:</b>		<b>100.00%</b>	<b>81,973</b>

Fund Description	Fund Percent	Fund Amount
1093 Clean Air Protection Fund	100.00%	507,286
<b>Total Funding:</b>	<b>100.00%</b>	<b>507,286</b>

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



# FISCAL NOTE

STATE OF ALASKA  
2003 LEGISLATIVE SESSION

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

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

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

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

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

**POSITIONS**

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

**ANALYSIS:** (Attach a separate page if necessary)  
This revised fiscal note is zero as the cost of reinvigorating the air permit program is in the Governor's FY 2004 operating budget request.  
  
This legislation removes roadblocks preventing predictable, reliable and rational permitting, while the budget increment provides staff to execute these legislative reforms and issue permits in a timely manner.  
  
The result is a permitting program that is predicable, protective of air quality and flexible enough to take advantage of fast changing business opportunities. This achieves the governor's goal of enhancing resource development while maintaining environmental protection.

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

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



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

HB 160  
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March 5, 2003

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

Dear Speaker Kott:

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

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

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

The Honorable Pete Kott  
March 5, 2003  
Page 2

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

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

Sincerely,

A handwritten signature in black ink, appearing to read "Frank H. Murkowski". The signature is written in a cursive style with a large initial "F" and a long horizontal stroke at the end.

Frank H. Murkowski  
Governor

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

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

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

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

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

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

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

42 160

## Air Permit Reform Bill - 2003

Notes by DEC 3/3/03

### What Does the Bill Accomplish?

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

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

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

### Who was Involved in Shaping the Bill?

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

Member entities and representatives on the Work Group were:

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

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

Facilitator: Brian Rogers of Infoinsights facilitated the Work Group meetings



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December 31, 2002

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

Via Fax and Email: (907) 465-5070  
[ernesta\\_ballard@envircon.state.ak.us](mailto:ernesta_ballard@envircon.state.ak.us)

Ref: Air Permits Work Group Final Report

Dear Commissioner Ballard:

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

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

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

Sincerely,

Brian Rogers  
Facilitator

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

- Alaska Department of Environmental Conservation  
Air Permits Work Group Report

## The Work Group

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

Members of the Work Group include<sup>1</sup>:

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

## Executive Summary

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

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

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

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

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

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

## **Construction Permitting**

### Background:

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

### Recommendations:

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

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

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

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

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

## **Title V Permitting**

### Background:

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

### Recommendations:

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

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

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

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<sup>2</sup> ADEC has never issued a nonattainment new source review (NSR) construction permit

## **Program Funding**

### Background:

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

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

### Recommendations:

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

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

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

### FY03 Shortfall Background:

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

### FY03 Shortfall Recommendations:

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

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

## **Mission Statement and Management Plan**

### Background:

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

### Recommendations:

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

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

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

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

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

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

## **Implementation**

### Background:

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

### Recommendations:

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

Specific issues requiring additional work include:

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

## **Attachment A: Alaska's Unique Characteristics**

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

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

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

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

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

### **Unique Alaska characteristics and their implications for air permitting**

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

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

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

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

## Attachment B: Comparison of Fees

Provided to the Air Permits Work Group by EPA

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

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

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

\* Information provided but too complicated to summarize here.

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

*Goal*

*Adopted  
as Amended*

*3/27/03*

13-GH1059\D  
Lauterbach  
3/27/03

*pages 7-25*

CS FOR HOUSE BILL NO. 160(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered:  
Referred:

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

A BILL

FOR AN ACT ENTITLED

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

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

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

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

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

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

10 (A) control of solid waste facilities under AS 46.03.020(10)(D)

11 and (E);

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

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

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

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

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

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

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

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

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

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

30 (4) [(3)] procedures for

31 (A) specifying when permit applications and renewal requests

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

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

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

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

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

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

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

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

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

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

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

24 (b) In this section,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 (5) AN EXISTING FACILITY FOR WHICH

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

10 (B) RECONSTRUCTION IS PROPOSED].

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

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

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

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

25 (4) contains another stationary source designated by

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

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

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

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

1 are to be submitted;

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

4 (C) processing and reviewing an application;

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

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

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

11 (A) emission standards and limitations;

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

14 (C) inspection and entry;

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

17 (E) annual certification of compliance;

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

19 (G) equipment malfunctions and emergencies;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 (h) In this section,

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

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

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

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

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

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

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

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

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

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

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

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

28 (a) After 30 days' written notice to the permittee, the department

29 (1) may terminate, modify, or revoke and reissue a construction or  
30 operating, or minor permit if the department finds that

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

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

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

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

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

11 (A) the permit contains a material mistake; or

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

15 (3) shall reopen a permit issued under this chapter

16 (A) based on a determination of the federal administrator or the  
17 department that the permit must be revised to comply with 42 U.S.C. 7401-  
18 7671q (Clean Air Act) and regulations adopted thereunder; or

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

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

29 (a) A permittee may request

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

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

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

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

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

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

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

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

22 (b) This section does not alter or affect

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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