

ALASKA LEGISLATURE COMMITTEE FILES 1991-1992
6957 HOUSE JUDICIARY 8672

1 facilities; the quantities, types or toxicity of air contaminants emitted; the emission source
2 classifications; and other factors reflecting the cost of administering the emission control permit
3 program under this chapter. Fees must be sufficient to cover, but not significantly exceed, the
4 reasonable direct and indirect costs required to develop and implement the permit program and
5 the federally mandated aspects of the small business assistance program established in this
6 chapter. For purposes of this subsection, "costs" include expenditures for

- 7 (1) preparing and adopting regulations to implement the permit program;
- 8 (2) preparing guidance on the permit program;
- 9 (3) reviewing and acting upon a permit application;
- 10 (4) implementing and enforcing the terms and conditions of a permit, excluding
11 court costs and attorney fees;
- 12 (5) monitoring of emissions and ambient air quality;
- 13 (6) reviewing and executing models, analyses, and demonstrations to evaluate
14 emissions;
- 15 (7) preparing inventories and tracking of facility emissions;
- 16 (8) performing data management, analysis, and report writing;
- 17 (9) conducting training, audits, or other services as provided under the small
18 business assistance program under AS 46.14.400 - 46.14.430; and
- 19 (10) reviewing and acting upon plans and other information submitted under
20 AS 46.14.200 - 46.14.290.

21 (c) The department shall review the fee structure adopted under (b) of this section at least
22 every five years and when there are changes in state or federal laws that affect the costs of
23 operating the permit program or the federally mandated aspects of the small business assistance
24 program. Upon review, the department shall amend the fee structure as necessary to ensure that
25 the fees cover, but do not significantly exceed, the reasonable costs authorized by (b) of this
26 section.

27 Sec. 46.14.255. PENALTY AND INTEREST FOR NONPAYMENT. The department
28 shall adopt regulations that provide for the assessment of a penalty of up to 50 percent of the fee
29 established under AS 46.14.250(b) against the owner and operator of a facility if the owner and
30 operator fail to timely pay a fee lawfully imposed under this chapter. The department may also
31 assess interest against the owner and operator, computed under AS 45.45.010(a), after a fee is

1 due under this chapter and is unpaid.
2 *Was Sec 46.14.265 in SB383*

3 ~~Sec. 46.14.260. DURATION OF OPERATING PERMITS. (a) An operating permit~~
4 ~~under this chapter shall be issued for a fixed term established by the department, but in no case~~
5 may the term exceed five years after the date of issue.

6 (b) If a timely and complete application for renewal of an operating permit is submitted
7 to the department, the existing permit issued under this chapter does not expire until the renewal
8 permit has been issued or denied.

9 *Was Sec. 46.14.270 in SB383*
10 Sec. 46.14.265. REOPENING OF PERMITS. (a) A permit issued under this chapter
11 is subject to review and reopening by the department based on the determination of the federal
12 administrator that the permit must be revised to comply with 42 U.S.C. 7401 - 7671q (Clean Air
13 Act).

14 (b) A permit issued under this chapter is subject to review and reopening by the
15 department if the permit is issued to a major facility and is valid for a term of three or more
16 years. The department shall reopen a permit described in this subsection to incorporate changes
17 in law, or to impose equivalent emission limitations, that became applicable after the permit was
18 issued. The department shall make incorporations allowed under this subsection as soon as
19 practicable, but, regarding a change in law, no later than 18 months after the change in law took
20 effect. The department is not required to reopen a permit under this subsection if the change in
21 law is not effective until after the date that the permit expires. Reopening of a permit under this
22 subsection may be treated as a permit renewal by the department if the procedural requirements
23 for permit renewal have been met.

24 (c) Proceedings to reopen a permit shall follow the same procedure as for initial permit
25 issuance and affect only those parts of the permit for which the department had cause to reopen
26 under this section.

27 *Was Sec 46.14.275 in SB383*
28 Sec. 46.14.270. TERMINATION, MODIFICATION, AMENDMENT, OR
29 REVOCATION AND REISSUANCE OF PERMITS. After 30 days' written notice to the
30 permittee, the department may terminate, modify, amend, or revoke and reissue a construction
31 or operating permit if the department finds that

(1) the permit was obtained by misrepresentation of material fact or by failure of
the owner and operator to disclose fully the facts relating to issuance of the permit;

(2) the permit contains a material mistake;

1 (3) the permittee has violated this chapter, a regulation, a judicial or
2 administrative order, or a term or condition of a permit, approval, or acceptance issued under this
3 chapter.

4 (4) there has been a material change in the quantity or type of air contaminant
5 emitted from the facility; or

6 (5) the permittee has failed to pay a fee imposed under AS 46.14.250 or a penalty
7 or interest imposed under AS 46.14.255.

8 *Was Sec 46.14.28 in SB383*
9 Sec. 46.14.275. FEDERAL TERMINATION, MODIFICATION, OR REVOCATION
10 AND REISSUANCE OF PERMITS. The department shall take measures practicable and
11 otherwise lawful to avoid termination, modification, or revocation and reissuance by the federal
12 administrator of permits issued by the department under this chapter.

13 *Was Sec 46.14.285 in SB383*
14 Sec. 46.14.280. TEMPORARY OPERATIONS. The department may issue a single
15 operating permit under AS 46.14.225, authorizing a facility to operate at specific multiple
16 locations in the state for temporary periods of time not to exceed one year at any one location.
17 A permit described in this section is valid only for the specific locations identified in the
18 application and authorized by the department. The department may not issue a permit under this
19 section unless the permit contains conditions that will ensure compliance with this chapter at each
20 authorized location, including compliance with ambient air quality standards and applicable
21 increment or visibility requirements adopted under this chapter. A permit under this section must
22 require the owner and operator to notify the department at least 30 days before a change in
23 location of a facility permitted under this section.

24 *Was Sec. 46.14.290 in SB383*
25 Sec. 46.14.285. PERMIT AS SHIELD. (a) Compliance with an operating permit issued
26 under this chapter is considered to be compliance with the operating permit program established
27 under this chapter.

28 (b) Nothing in this section alters or affects

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

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

Was Sec. 46.14.292 in SB383
32 Sec. 46.14.290. TIMELY AND COMPLETE APPLICATION AS SHIELD. If an owner
and operator have submitted a timely and complete application for a permit or a permit renewal,

1 as applicable, but final action has not been taken on the application, the owner's and operator's
2 failure to have an operating permit is not a violation of this chapter unless the delay in final
3 action was due to the failure of the owner and operator to timely submit information required or
4 requested to process the application. An owner and operator required to have an operating permit
5 under this chapter are not in violation of the operating permit program established under this
6 chapter before the date on which the owner and operator are required to submit an application
7 under AS 46.14.220.

8 ARTICLE 3. MOTOR VEHICLE POLLUTION CONTROL PROGRAM.

9 Sec. 46.14.300. MOTOR VEHICLE POLLUTION. (a) When the department determines
10 that the state of knowledge and technology may allow or make appropriate the control of
11 emissions from motor vehicles to further air quality control, the department may provide, by
12 regulation, for the control of the emissions from motor vehicles. The regulations may prescribe
13 requirements for the installation and use of equipment designed to reduce or eliminate emissions
14 and for the proper maintenance of this equipment.

15 (b) Unless otherwise exempted by law, a person shall maintain in operating condition any
16 element of the air pollution control system or mechanism of a motor vehicle if the department
17 adopts regulations requiring that an air pollution control system or mechanism be maintained in
18 or on the motor vehicle. Failure to maintain a required system or mechanism in operating
19 condition subjects the motor vehicle's registration to suspension or cancellation. A motor vehicle
20 whose registration has been suspended or canceled under this subsection is not eligible for
21 subsequent registration until the owner or operator obtains certification from the department,
22 based on a demonstration that the air pollution control system or mechanism is restored to
23 operating condition.

24 (c) The department shall consult with the Department of Public Safety regarding
25 implementation of the motor vehicle pollution control program. The Department of Public Safety
26 shall cooperate with the department in implementing the program.

27 (d) If the department adopts regulations requiring the maintenance of air pollution control
28 systems or mechanisms in motor vehicles to control emissions from the vehicle, a motor vehicle
29 subject to those regulations may not be issued a certificate of inspection unless the required air
30 pollution control system or mechanism has been inspected in accordance with the standards,
31 testing techniques, and instructions furnished by the department and the motor vehicle has been

1 found to meet those standards. A valid certificate of inspection for the emission control system,
2 if required by the department, must be presented to the Department of Public Safety before that
3 department may register a motor vehicle.

4 ARTICLE 4. SMALL BUSINESS ASSISTANCE PROGRAM.

5 Sec. 46.14.400. DEVELOPMENT OF PROGRAM. A small business assistance program
6 is established in the department. The program shall be included in the state air quality control
7 plan under AS 46.14.215.

8 Sec. 46.14.410. SCOPE OF PROGRAM. (a) The small business assistance program
9 shall

10 (1) collect, coordinate, and disseminate information on methods and technologies
11 that will assist small business facilities to comply with this chapter and regulations adopted under
12 this chapter;

13 (2) encourage lawful cooperation among small business facilities and other
14 persons to facilitate compliance with this chapter and regulations adopted under this chapter;

15 (3) provide small business facilities with information on pollution prevention and
16 accidental release detection and prevention, including information on alternative technologies,
17 process changes, products, and methods of operation that help reduce air pollution;

18 (4) assist small business facilities in determining applicable requirements and in
19 receiving permits under this chapter in a timely and efficient manner;

20 (5) ensure that small business facilities receive notice of their rights under this
21 chapter in a manner and form that ensures adequate time for the facilities to evaluate compliance
22 methods and to evaluate applicable proposed or final regulations adopted or standards issued
23 under this chapter or 42 U.S.C. 7401 - 7671q (Clean Air Act);

24 (6) inform small business facilities of their obligations under this chapter and
25 regulations adopted under this chapter;

26 (7) provide small business facility operators with a list of auditors available for
27 auditing the operation of the facility or, if possible, and at the request of a facility owner or
28 operator, audit a facility to evaluate compliance with this chapter and regulations adopted under
29 this chapter; an audit under this paragraph may not be regarded as an inspection or investigation;

30 (8) assist in developing and implementing modified work practices or technical
31 changes to processes to facilitate compliance with this chapter and regulations adopted under this

1 chapter;

2 (9) coordinate with the federal small business stationary source technical and
3 environmental compliance assistance program established under 42 U.S.C. 7661f(b). ~~(Clean Air-~~
4 ~~Act, sec. 507(b));~~

5 (10) collect and make available guidance prepared by the federal small business
6 stationary source technical and environmental compliance assistance program;

7 (11) at the request of a facility owner or operator, refer questions concerning
8 compliance with this chapter, or with a regulation adopted or permit issued under this chapter,
9 to air quality management personnel of the department; and

10 (12) designate a person to be an advocate for small businesses while serving as
11 a liaison between small businesses and air quality management personnel of the department.

12 (b) If the legislature appropriates money from the general fund for purposes of the small
13 business assistance program, the department shall provide the services listed in (a) of this section
14 to a requesting facility that is not a small business concern as defined in 15 U.S.C. 631 but that
15 otherwise meets the definition of a small business facility under AS 46.14.990 and is subject to
16 the requirements of this chapter.

17 Sec. 46.14.420. POWER TO LIMIT PROGRAM. After consultation with the federal
18 administrator and the administrator of the United States Small Business Administration, and after
19 providing notice and opportunity for public hearing, the department may exclude from the scope
20 of the small business assistance program established in AS 46.14.410 a category or subcategory
21 of small business facilities that the department finds to have sufficient technical and financial
22 capabilities to meet the requirements of this chapter and federal law without the assistance
23 provided under AS 46.14.400 - 46.14.430.

24 Sec. 46.14.430. COMPLIANCE ADVISORY PANEL. (a) A compliance advisory panel
25 is established in the department. The panel members shall serve without compensation, but are
26 entitled to travel expenses and per diem as authorized for state boards under AS 39.20.180.

27 (b) The panel consists of

28 (1) two members, who are not owners or representatives of owners of small
29 business stationary sources, selected by the governor to represent the general public;

30 (2) one member selected by the commissioner to represent the department; and

31 (3) four members, who are owners or representatives of owners of small business

1 stationary sources, selected as follows:

2 (A) one shall be selected by the president of the senate and one shall be
3 selected by the speaker of the house;

4 (B) if there are members of the senate who are not part of the majority
5 caucus of the senate, the leader of the largest nonmajority group shall select a panel
6 member; if all members of the senate are in the majority caucus, then the president of the
7 senate shall select a second panel member in addition to the selection authorized under
8 (A) of this paragraph;

9 (C) if there are members of the house who are not part of the majority
10 caucus of the house, the leader of the largest nonmajority group shall select a panel
11 member; if all members of the house are in the majority caucus, then the speaker of the
12 house shall select a second panel member in addition to the selection authorized under
13 (A) of this paragraph.

14 (c) The compliance advisory panel shall

15 (1) elect a chair and agree upon procedures by which the panel will function;

16 (2) meet semi-annually at the call of the chair and give public notice of panel
17 meetings as required under AS 44.62.310 - 44.62.312;

18 (3) prepare advisory opinions concerning the effectiveness of the small business
19 assistance program, difficulties encountered in making the program efficient and effective, and
20 degree of enforcement and severity of air pollution offenses;

21 (4) make periodic reports to the administrator concerning the compliance of the
22 small business assistance program with requirements of 44 U.S.C. 3501 (Paperwork Reduction
23 Act), 5 U.S.C. 601 (Regulatory Flexibility Act), and 5 U.S.C. 504 (Equal Access to Justice Act);

24 (5) review information designed to assist small business facilities in complying
25 with this chapter to ensure that the information is understandable by laypersons; and

26 (6) have the small business advocate designated under AS 46.14.410(a)(12) assist
27 the panel in the development and dissemination of panel reports and advisory opinions.

28 ARTICLE 5. LOCAL PROGRAMS.

29 Was Sec. 46.14.520 in 8B383
30 Sec. 46.14.500. LOCAL AIR QUALITY CONTROL PROGRAMS. (a) With the
31 approval of the department, a municipality with a population of 1,000 or more may establish and
administer within its jurisdiction a local air quality control program that is consistent with all or

1 part of the department's air quality program as established under this chapter. A first or second
2 class borough may administer an air quality control program approved by the department under
3 this subsection on an areawide basis and is not subject to the restrictions for acquiring additional
4 areawide powers specified in AS 29.35.300 - 29.35.350. A third class borough may administer
5 an air quality control program approved by the department under this subsection only in a service
6 area formed under AS 29.35.490(b) or (c).

7 (b) With the approval of the department, two or more municipalities or other entities may
8 create a local air quality district for the purpose of jointly administering an air quality control
9 program within the boundaries of the air quality district.

10 (c) The department may require expansion or contraction of the jurisdictional boundaries
11 of a local air quality control program approved under (a) or (b) of this section to include an
12 adjacent municipality or contiguous area in the unorganized borough if the department determines
13 that the expansion or contraction is necessary for the effectiveness and efficiency of the
14 administration of a local program based upon an evaluation of

15 (1) the location, character, or extent of particular concentrations of population;

16 (2) local air contaminant sources; or

17 (3) relevant geographic, topographic, or meteorological factors.

18 (d) A municipality or a local air quality district seeking department approval for a local
19 air quality control program shall enter into a cooperative agreement with the department. The
20 cooperative agreement must include provisions specifying

21 (1) the respective duties and authority of the department and the municipality or
22 local air quality district in the administration of the local air quality control program;

23 (2) the authority of the municipality or the local air quality district to employ staff
24 to administer the local air quality control program;

25 (3) duties of staff employed under (2) of this subsection;

26 (4) respective enforcement responsibilities of the department and the municipality
27 or the local air quality district.

28 (e) A local air quality control program shall provide for the exemption of a locally
29 registered motor vehicle from motor vehicle emission requirements adopted under AS 46.14.300
30 if the motor vehicle is not used within the program's jurisdiction.

31 (f) A municipality or a local air quality district administering a program under this

1 section shall administer its local air quality control program according to this chapter, regulations
2 adopted under this chapter, and its cooperative agreement under (d) of this section, except that
3 a municipality's or local air quality district's program may be more stringent than the program
4 administered by the department if the municipality or district has additional legal authority
5 authorizing additional requirements.

6 (g) A decision, order, permit, or other determination made or issued under a local air
7 quality control program is considered to be a decision, order, permit, or other determination of
8 the department.

9 *Was Sec 46.14.530 in 8B383*
10 Sec. 46.14.510. INADEQUACY OF LOCAL PROGRAM. (a) If a municipality or a
11 local air quality district has an approved air quality control program under AS 46.14.500 and the
12 department determines that the program is being implemented in a manner that fails to prevent
13 or control air pollution in the jurisdiction to which the program applies, the department shall give
14 written notice, setting out its determination, to the municipality or local air quality district.
15 Within 45 days after giving written notice, the department shall conduct a public hearing on the
16 matter.

17 (b) If, after the hearing, the department upholds the determination made in the written
18 notice, the department shall provide the municipality or local air quality district with a written
19 finding setting out the nature of the deficiencies and a description of the necessary action to be
20 taken in order for the program to prevent or control air pollution. The department shall provide
21 its finding to the municipality or district within 45 days after the closure of the public hearing
22 record. The department shall set a reasonable period of time for the municipality or local air
23 quality district to take corrective action in response to the department's finding.

24 (c) If the municipality or local air quality district fails to take corrective action within
25 the time period set by the department under (b) of this section, the department shall terminate
26 the cooperative agreement and resume management of the program in the affected jurisdiction.
27 If the municipality or the local air quality district partially remedies, to the department's
28 satisfaction, the deficiencies found in the determination, the department shall amend the
29 cooperative agreement to reflect a modified allocation of responsibilities between the department
30 and municipality or the local air quality district.

31 (d) A municipality or local air quality district that has had its cooperative agreement
terminated may resume, with the department's approval, a local air quality control program if the

1 municipality or district agrees to comply with AS 46.14.500 and with any corrective action plan
2 required by the department.

3 (e) If the department finds that control of a particular class of facility or source, because
4 of its complexity or magnitude is beyond the reasonable capability of the municipality or the
5 local air quality district or may be more efficiently and economically controlled at the state level,
6 the department may assume and retain jurisdiction over the class of facility or source.
7 Classifications under this subsection may be based on the nature of facilities or sources involved,
8 their size relative to the size of the communities in which they are located, or other basis
9 established by the department.

10 *Was Sec. 46.14.540 in SB 383*
11 Sec. 46.14.520. STATE AND FEDERAL AID. A municipality or local air quality
12 district with a local air quality control program may apply for, receive, administer, and spend
13 state or federal aid for the control of air emissions or the development and administration of the
14 program if an application is first submitted to and approved by the department. Subject to
15 available money appropriated by the legislature, the department shall approve an application if
16 it is consistent with the terms and conditions of the applicable cooperative agreement and meets
17 the requirements of this chapter.

18 *Was Sec. 46.14.500 in SB 383*
19 ARTICLE 6. MISCELLANEOUS PROVISIONS.

20 Sec. 46.14.800. PUBLIC RECORDS. Except as provided in AS 46.14.810, permits,
21 permit applications, emissions and monitoring reports, compliance reports, certifications, and
22 monitoring, reporting, and quality assurance plans in the department's possession and control are
23 available to the public for inspection and copying.

24 *Was Sec. 46.14.510 in SB 383*
25 Sec. 46.14.810. CONFIDENTIALITY OF RECORDS. Records and information, other
26 than emission data, in the department's possession and control are considered confidential records
27 if

28 (1) the owner and operator have certified to the department or authorized local
29 program that public disclosure would tend to adversely affect the owner's and operator's
30 competitive position; and

31 (2) the records

(A) relate to production figures, sales figures, processes, or production
techniques of the owner and operator; or

(B) consist of meteorological or ambient air quality data collected by the

1 owner or operator to support a permit application or amendment.
2 *Was Sec. 46.14.560 in 8B383*
3 Sec. 46.14.820. RESPONSIBILITIES OF OWNERS AND OPERATORS. Unless
4 specifically indicated otherwise, the responsibilities of this chapter and of regulations adopted
5 under this chapter are imposed on the owner and the operator of a facility subject to this chapter.
6 If the owner and operator of the facility are separate persons, only one person is required to
7 discharge a specific responsibility. Both persons are liable for noncompliance with the
8 requirements of this chapter or of regulations adopted under this chapter.

9 *Was Sec. 46.14.295 in 8B383*
10 Sec. 46.14.830. ADMINISTRATIVE PENALTIES FOR AIR POLLUTION. (a) The
11 department may assess an administrative penalty against a person who violates, or causes, or
12 allows to be violated a provision of this chapter, a regulation adopted under this chapter, or a
13 term or condition of an order, permit, or approval of the department under this chapter.

14 (b) An administrative penalty assessed under this section may not exceed \$10,000 a day
15 for each offense. Each provision, regulation, term, or condition violated is a separate and distinct
16 offense. If a violation of a provision, regulation, term, or condition continues from day to day,
17 each day is a separate offense. In determining the amount of a penalty assessed under this
18 section, the department shall consider the effect of the offense on the public health or the
19 environment, prior history of compliance or noncompliance with this chapter, the need to deter
20 future offenses, the economic benefit of noncompliance realized by the offender, and other factors
21 that the department considers relevant. The department shall, by regulation, prepare, publish, and
22 make available to interested persons, a penalty policy describing the factors to be considered in
23 setting penalties, the methods for weighing the factors, and other aspects of penalty computation.

24 (c) If a penalty is assessed under this section, the department shall provide the assessment
25 notice to the person affected, by personal service or by certified mail, return receipt requested.
26 An administrative penalty assessed under this section becomes a final agency action 30 days after
27 service or mailing of the assessment notice unless an administrative hearing is requested by the
28 person against whom the penalty is assessed. Failure to request an administrative hearing within
29 30 days after service or mailing of the assessment notice constitutes a waiver of that person's
30 right to an administrative hearing. The department may extend the time periods specified in this
31 subsection for good cause.

(d) If an administrative hearing is requested, the department shall grant a hearing and
conduct the hearing in accordance with its adjudicatory hearing procedures. After the hearing,

1 the department may modify, rescind, or affirm the administrative penalty. The modification,
2 rescission, or affirmation of a penalty under this subsection is a final agency action.

3 (e) A person against whom an administrative penalty is assessed may obtain judicial
4 review of the administrative penalty as provided in Alaska Rules of Appellate Procedure. The
5 court may set aside, or adjust the amount of, the administrative penalty only if the administrative
6 record, taken as a whole, does not contain a reasonable basis to support the finding of offense
7 or the amount of penalty assessed by the department.

8 (f) Action under this section by the department does not limit or otherwise affect the
9 authority of the department to enforce this chapter, or to recover damages, restoration expenses,
10 investigation costs, court costs, attorney fees, and other necessary expenses. The court shall
11 reduce a judicial penalty subsequently imposed under AS 46.03.760 by any amount ordered to
12 be paid under this section by the same person for the same offense.

13 (g) The assessment of an administrative penalty under this section does not affect the
14 obligation of a person to comply with this chapter or with a regulation, order, permit, or approval
15 of the department under this chapter.

16 (h) If a person fails or refuses to pay an administrative penalty assessed under this
17 section after the penalty has become a final agency action, the department may request the
18 attorney general to commence a judicial action or take other appropriate steps to bring an action
19 to collect the penalty. If the department prevails in court, the court shall order the person to pay

20 (1) the amount of the administrative penalty assessed;

21 (2) interest at the statutory rate under AS 45.45.010(a) from the date the penalty
22 became a final agency action; and

23 (3) reasonable attorney fees and costs incurred by the department in the collection
24 action before the court.

25 *was 46.14.240 ~ 80383*
26 Sec. 46.14.840. CLEAN AIR PROTECTION FUND. (a) The clean air protection fund
27 is established. The fund consists of

28 (1) fees, penalties, and interest collected by the department under AS 46.14.250
29 and 46.14.255, as required by 42 U.S.C. 7661a(b)(3)(C)(iii) (Clean Air Act, sec. 502(b)(3)(C)(iii))
30 for state participation in the emission control permit program; and

31 (2) appropriations to the fund.

(b) The money deposited into the clean air protection fund under (a)(1) of this section

1 may be used solely to cover the reasonable direct and indirect costs, including court costs and
2 attorney fees, required to support the permit program under this chapter, and those activities of
3 the small business assistance program that are directed at facilities subject to this chapter.

4 *Was Sec. 46.14.260 (c) in SB 383*
Sec. 46.14.850. SPECIAL ACCOUNT. An administrative penalty, and any interest,
5 attorney fees, and costs collected under AS 46.14.830, and any civil penalties, assessments, or
6 damages collected under AS 46.03.760 or 46.03.790 as a result of a violation relating to this
7 chapter, shall be deposited in the general fund.

8 **ARTICLE 7. GENERAL PROVISIONS.**

9 *Was Sec. 46.14.550 in SB 383*
Sec. 46.14.900. LIMITATION OF POWERS. This chapter does not

10 (1) grant jurisdiction or authority with respect to air contamination existing solely
11 within residential dwellings or commercial and industrial plants, works, or shops;

12 (2) affect the relations between employers and employees with respect to or
13 arising out of a condition of air contamination or air pollution; or

14 (3) supersede or limit the applicability of a law or an ordinance relating to
15 sanitation, industrial health, or safety.

16 *Was Sec 46.14 900 in SB 383*
Sec. 46.14.990. DEFINITIONS. In this chapter,

17 (1) "air contaminant" means a regulated air contaminant or a hazardous air
18 contaminant;

19 (2) "ambient air" means that portion of the atmosphere, external to buildings, to
20 which the general public has access;

21 (3) "ambient air quality standard" means a standard, other than an emission
22 limitation or standard, adopted under AS 46.14.010 or 42 U.S.C. 7409 (Clean Air Act, sec. 109);

23 (4) "area source" means a source of fugitive emissions;

24 (5) "certificate of inspection" means a form prepared or approved by the
25 department, signed by a qualified mechanic who attests that the mechanic has inspected a motor
26 vehicle and that the motor vehicle has passed an emissions inspection or received a waiver, and
27 bearing the statement above the mechanic's signature that false statements are punishable as a
28 crime under AS 11.56.210 and AS 46.03.790(a);

29 (6) "commissioner" means the commissioner of environmental conservation;

30 (7) "construct" or "construction" means to fabricate, erect, or install, or to make
31 a physical change, that would result in emissions;

1 (8) "contaminant outlet" includes exhaust stacks, flares, vents, and other openings
2 in a facility from which an air contaminant could be emitted;

3 (9) "department" means the Department of Environmental Conservation;

4 (10) "emission" means a release of one or more air contaminants to the
5 atmosphere;

6 (11) "emission limitation" and "emission standard" mean a requirement established
7 by the department or the federal administrator, other than an ambient air quality standard, that
8 limits the quantity, rate, or concentration of emission of an air contaminant, including a
9 requirement relating to the operation or maintenance of a source to ensure continuous emission
10 reduction, and design, equipment, work practice, or operational standard adopted under this
11 chapter or 42 U.S.C. 7401 - 7671q (Clean Air Act);

12 (12) "equivalent emission limitation" means

13 (A) a limitation for hazardous air contaminants established by the federal
14 administrator or the commissioner on a case-by-case basis that is equivalent to the
15 limitation that would apply to a source or facility if an emission standard had been
16 adopted in a timely manner under 42 U.S.C. 7412(d) (Clean Air Act, sec. 112(d)); or

17 (B) if the criteria of the early reduction program established in 42 U.S.C.
18 7412(i)(5) (Clean Air Act, sec. 112(i)(5)) are met, a limitation established under that
19 subsection and 42 U.S.C. 7412(j)(5) (Clean Air Act, sec. 112(j)(5));

20 (13) "facility" means one or more structures, buildings, installations, or properties
21 upon which a source or sources are located, that are contiguous or adjacent, and that are owned
22 or operated by the same person or by persons under common control;

23 (14) "federal administrator" means the administrator of the United States
24 Environmental Protection Agency;

25 (15) "fugitive emissions" means emissions of an air contaminant that are not
26 emitted from a contaminant outlet;

27 (16) "hazardous air contaminant" means a pollutant listed in or under 42 U.S.C.
28 7412(b) (Clean Air Act, sec. 112(b));

29 (17) "local air quality control program" means a program authorized under
30 AS 46.14.500 to implement some or all of the provisions of this chapter;

31 (18) "major facility" means a facility with the potential to emit at least

1 (A) 100 TPY of a regulated air contaminant;

2 (B) 10 TPY of a hazardous air contaminant; or

3 (C) 25 TPY, in the aggregate, of two or more hazardous air contaminants;

4 (19) "modification" or "modify" means to make a change or a series of changes
5 in operation, or any physical change or addition to a facility or source that increases the actual
6 emissions of an air contaminant;

7 (20) "operator" means a person or persons who direct, control, or supervise a
8 facility or source that has the potential to emit an air contaminant to the atmosphere;

9 (21) "owner" means a person or persons with a proprietary or possessory interest
10 in a facility or source that has the potential to emit an air contaminant to the atmosphere;

11 (22) "person" has the meaning given in AS 01.10.060 and also includes a
12 municipality, the University of Alaska, the Alaska Railroad Corporation, and other departments,
13 agencies, instrumentalities, units, and corporate authorities of the state;

14 (23) "potential to emit" means the maximum quantity of a release of an air
15 contaminant, considering a facility's physical or operational design, based on continual operation
16 of all sources within the facility for 24 hours a day, 365 days a year, reduced by the effect of
17 pollution control equipment and approved state or federal limitations on the capacity of the
18 facility's sources or the facility to emit an air contaminant, including restrictions on hours or rates
19 of operation and type or amount of material combusted, stored, or processed; "potential to emit"
20 does not include

21 (A) a one-time, accidental release of an air contaminant; or

22 (B) fugitive emissions, unless the facility is subject to AS 46.14.205(a)(2);

23 (24) "register" or "registration" means vehicle registration under AS 28.10;

24 (25) "regulated air contaminant" means

25 (A) a material, compound, or element for which a national or state
26 ambient air quality standard has been adopted;

27 (B) oxides of nitrogen;

28 (C) a volatile organic compound; and

29 (D) a pollutant that is addressed by a standard adopted under 42 U.S.C.
30 7411 - 7412 (Clean Air Act, sec. 111 - 112);

31 (26) "small business facility" means a facility that

1 (A) is owned or operated by a person who employs 100 or fewer persons;
2 (B) is a small business concern as defined in 15 U.S.C. 631 (Small
3 Business Act); and

4 (C) emits less than 100 TPY of regulated air contaminants;

5 (27) "source" means a device, process, activity, or equipment that causes, or could
6 cause, a release of an air contaminant;

7 (28) "TPY" means tons per year.

8 * Sec. 5. AS 28.10.041(a)(10) is amended to read:

9 (10) the vehicle is subject to a state-approved [LOCAL] emission inspection
10 program adopted [BY MUNICIPAL ORDINANCE] under AS 46.14.300 or 46.14.500
11 [AS 46.03.210], and the vehicle does not meet the standards of that program, unless the vehicle
12 uses a fuel source that does not primarily emit carbon monoxide;

13 * Sec. 6. AS 28.10.423 is amended to read:

14 Sec. 28.10.423. EMISSION CONTROL INSPECTION PROGRAM FEES. In addition
15 to the annual registration fee specified in AS 28.10.421, a \$1 fee is imposed upon every vehicle
16 required to be inspected under an emission control program established under AS 46.14.300 or
17 46.14.500 [AS 46.03.210]. This fee shall be collected at the same time and in the same manner
18 as the registration fee.

19 * Sec. 7. AS 29.35 is amended by adding a new section to read:

20 Sec. 29.35.055. LOCAL AIR QUALITY CONTROL PROGRAM. A municipality may
21 establish a local air quality control program as provided in AS 46.14.500 only if the municipality
22 has obtained the consent of its governing body through an ordinance authorizing the participation.

23 * Sec. 8. AS 29.35.200(b) is amended to read:

24 (b) A first class borough may by ordinance exercise the following powers on an areawide
25 basis:

- 26 (1) provide transportation systems;
- 27 (2) provide water pollution control;
- 28 (3) provide air pollution control in accordance with AS 46.14.500 [AS 46.03.140 -
29 46.03.230];
- 30 (4) license day care facilities;
- 31 (5) license, impound, and dispose of animals.

1 * Sec. 9. AS 29.35.210(a) is amended to read:

2 (a) A second class borough may by ordinance exercise the following powers on a
3 nonareawide basis:

4 (1) provide transportation systems;

5 (2) regulate the offering for sale, exposure for sale, sale, use, or explosion of
6 fireworks;

7 (3) license, impound, and dispose of animals;

8 (4) subject to AS 29.35.050, provide garbage, solid waste, and septic waste
9 collection and disposal;

10 (5) provide air pollution control under AS 46.14.500 [IN ACCORDANCE WITH
11 AS 46.03.140 - 46.03.230];

12 (6) provide water pollution control;

13 (7) participate in federal or state loan programs for housing rehabilitation and
14 improvement for energy conservation;

15 (8) provide for economic development;

16 (9) provide for the acquisition and construction of local service roads and trails
17 under AS 19.30.111 - 19.30.251;

18 (10) establish an emergency services communication center under AS 29.35.130;

19 (11) subject to AS 28.01.010, regulate the licensing and operation of motor
20 vehicles and operators;

21 (12) engage in activities authorized under AS 29.47.460;

22 (13) contain, clean up, or prevent a release or threatened release of oil or a
23 hazardous substance, and exercise a power granted to a municipality under AS 46.04, AS 46.08,
24 or AS 46.09; the borough shall exercise its authority under this paragraph in a manner that is
25 consistent with a regional master plan prepared by the Department of Environmental
26 Conservation under AS 46.04.210.

27 * Sec. 10. AS 29.35.210(b) is amended to read:

28 (b) A second class borough may by ordinance exercise the following powers on an
29 areawide basis:

30 (1) provide transportation systems;

31 (2) license, impound, and dispose of animals;

1 (3) provide air pollution control under AS 46.14.500 [IN ACCORDANCE WITH
2 AS 46.03.140 - 46.03.230];

3 (4) provide water pollution control;

4 (5) license day care facilities.

5 * **Sec. 11.** AS 37.05.146(4) is amended by adding a new subparagraph to read:

6 (P) clean air protection fund (AS 46.14.840).

7 * **Sec. 12.** AS 44.46.025(a) is amended to read:

8 (a) The Department of Environmental Conservation may adopt regulations that prescribe
9 reasonable fees, and establish procedures for the collection of the fees, to cover the direct costs
10 of the following services provided by the department:

11 (1) inspections, permit administration, plan review and approval, and other related
12 services provided under AS 03.05, AS 17.20, and AS 18.35;

13 (2) the emission control permitting program and the motor vehicle pollution
14 control program under AS 46.14; fees established under this paragraph shall also cover
15 indirect costs of the programs to the extent required by federal law [AIR QUALITY
16 PERMITS UNDER AS 46.03.140 AND 46.03.160];

17 (3) hazardous waste permits under AS 46.03.299 and 46.03.302;

18 (4) plan approvals and permits for sewerage system and treatment works and
19 wastewater disposal systems, and plan approvals for drinking water systems, under AS 46.03.720;

20 (5) oil discharge financial responsibility approvals under AS 46.04.040;

21 (6) oil discharge contingency plan approvals under AS 46.04.030;

22 (7) water and wastewater operator training under AS 46.30.

23 * **Sec. 13.** AS 44.62.330(a)(44) is amended to read:

24 (44) Department of Environmental Conservation, except to the extent that
25 AS 44.62.360 - 44.62.400 are inconsistent with the manner in which proceedings are initiated
26 under the provisions of AS 46.03 and AS 46.14;

27 * **Sec. 14.** AS 46.03.760(f) is amended to read:

28 (f) A person who violates or causes or permits to be violated a provision of
29 AS 46.03.250 - 46.03.314, AS 46.14, or a regulation, a lawful order of the department, or a
30 permit, approval, or acceptance, or term or condition of a permit, approval, or acceptance issued
31 under AS 46.03.250 - 46.03.314 or AS 46.14 is liable, in a civil action, to the state for a sum

1 to be assessed by the court of not less than \$500 nor more than \$100,000 for the initial violation,
2 nor more than \$10,000 for each day after that on which the violation continues, and that shall
3 reflect, when applicable,

4 (1) reasonable compensation in the nature of liquidated damages for any adverse
5 environmental effects caused by the violation, that shall be determined by the court according
6 to the toxicity, degradability and dispersal characteristics of the substance discharged, the
7 sensitivity of the receiving environment, and the degree to which the discharge degrades existing
8 environmental quality;

9 (2) reasonable costs incurred by the state in detection, investigation, and attempted
10 correction of the violation;

11 (3) the economic savings realized by the person in not complying with the
12 requirement for which a violation is charged; and

13 (4) the need for an enhanced civil penalty to deter future noncompliance.

14 * Sec. 15. AS 46.03.765 is amended to read:

15 Sec. 46.03.765. INJUNCTIONS. The superior court has jurisdiction to enjoin a violation
16 of this chapter, AS 46.04, [OR] AS 46.09, AS 46.14, or of a regulation, a lawful order of the
17 department, or permit, approval, or acceptance, or term or condition of a permit, approval, or
18 acceptance issued under this chapter, AS 46.04, [OR] AS 46.09, or AS 46.14. In actions brought
19 under this section, temporary or preliminary relief may be obtained upon a showing of an
20 imminent threat of continued violation, and probable success on the merits, without the necessity
21 of demonstrating physical irreparable harm. The balance of equities in actions under this section
22 may affect the timing of compliance, but not the necessity of compliance within a reasonable
23 period of time.

24 * Sec. 16. AS 46.03.780(a) is amended to read:

25 (a) A person who violates a provision of this chapter, AS 46.04, [OR] AS 46.09, or
26 AS 46.14, or who fails to perform a duty imposed by this chapter, AS 46.04, [OR] AS 46.09, or
27 AS 46.14, or violates or disregards an order, permit, or other determination of the department
28 made under the provisions of this chapter, AS 46.04, [OR] AS 46.09, or AS 46.14, respectively,
29 and thereby causes the death of fish, animals, or vegetation or otherwise injures or degrades the
30 environment of the state is liable to the state for damages.

31 * Sec. 17. AS 46.03.790(a) is amended to read:

1 (a) Except as provided in (d) of this section, a person is guilty of a class A misdemeanor
2 if the person with criminal negligence

3 (1) violates a provision of this chapter, AS 46.04, [OR] AS 46.09, or AS 46.14.
4 a regulation or order of the department, or a permit, approval, or acceptance, or a term or
5 condition of a permit, approval, or acceptance issued under this chapter, AS 46.04, [OR]
6 AS 46.09, or AS 46.14;

7 (2) fails to provide information or provides false information required by
8 AS 46.03.755, AS 46.04, or AS 46.09, or by a regulation adopted by the department under
9 AS 46.03.755, AS 46.04, or AS 46.09; [OR]

10 (3) makes a false statement or representation in an application, label, manifest,
11 record, report, permit, or other document filed, maintained, or used for purposes of compliance
12 with AS 46.03.250 - 46.03.314 applicable to hazardous wastes or a regulation adopted by the
13 department under AS 46.03.250 - 46.03.314;

14 (4) makes a false statement, representation, or certification in an application,
15 notice, record, report, permit, or other document filed, maintained, or used for purposes
16 of compliance with AS 46.14 or a regulation adopted under AS 46.14; or

17 (5) renders inaccurate a monitoring device or method required to be
18 maintained under AS 46.14, a regulation adopted under AS 46.14, or a permit issued by the
19 department or a local air quality control program under AS 46.14.

20 * Sec. 18. AS 46.03.790 is amended by adding a new subsection to read:

21 (h) Notwithstanding AS 12.55.035(b), upon conviction of an offense related to AS 46.14
22 and described in (a) of this section, a defendant who is not an organization may be sentenced to
23 pay a fine of not more than \$10,000 for each separate offense.

24 * Sec. 19. AS 46.03.850(a) is amended to read:

25 (a) When, in the opinion of the department, a person is violating or is about to violate
26 a provision of this chapter, [OR] AS 46.04, or AS 46.14, or a regulation or lawful order of the
27 department, or a permit or certificate, or a term or condition of a permit or certificate issued by
28 the department under this chapter, [OR] AS 46.04, AS 46.14, the department may notify the
29 person of its determination by personal service or certified mail. The determination and notice
30 do not constitute an order under AS 46.03.820.

31 * Sec. 20. AS 46.03.875 is amended to read:

1 Sec. 46.03.875. REMEDIES CUMULATIVE. All remedies provided by this chapter,
2 [OR] AS 46.04, or AS 46.14 are cumulative, and the securing of relief, whether injunctive, civil,
3 or criminal, under a section of this chapter, [OR] AS 46.04, or AS 46.14 does not stop the state
4 from obtaining relief under any other section of this chapter, [OR] AS 46.04, or AS 46.14.

5 * Sec. 21. AS 46.03.890(b) is amended to read:

6 (b) Inspection and enforcement employees of the department designated by the
7 commissioner are peace officers in the performance of their duties under this chapter, AS 46.04,
8 [AS 46.03, AND] AS 46.09, and AS 46.14.

9 * Sec. 22. AS 46.08.075(a) is amended to read:

10 (a) The state has a lien for expenditures by the state from the oil and hazardous substance
11 release response fund or from any other state fund, for the costs of response, containment,
12 removal, or remedial action resulting from an oil or hazardous substance release [SPILL], or,
13 with respect to response costs, the substantial threat of a release of oil or a hazardous substance
14 against all property owned by a person who is determined by the commissioner to be liable for
15 the expenditures under this chapter, AS 46.03, AS 46.04, AS 46.14, 42 U.S.C. 9607, or other
16 state or federal law. The lien includes interest, at the maximum rate allowable under
17 AS 45.45.010(a), from the date of the expenditures. The state may file an action in a court of
18 competent jurisdiction in order to foreclose on the lien.

19 * Sec. 23. AS 46.08.900(6) is amended to read:

20 (6) "hazardous substance" means an element or compound that, when it enters into
21 the atmosphere or into or on the surface or subsurface land or water of the state, presents an
22 imminent and substantial danger to the public health or welfare, or to fish, animals, vegetation,
23 or any part of the natural habitat in which fish, animals, or wildlife may be found; or (B) a
24 substance defined as a hazardous substance under 42 U.S.C. 9601 - 9657 (Comprehensive
25 Environmental Response, Compensation, and Liability Act of 1980); "hazardous substance" does
26 not include uncontaminated crude oil or uncontaminated refined oil in an amount of 10 gallons
27 or less;

28 * Sec. 24. AS 46.09.900(4) is amended to read:

29 (4) "hazardous substance" means (A) an element or compound that, when it enters
30 into the atmosphere, or into or on the surface or subsurface land or water of the state, presents
31 an imminent and substantial danger to the public health or welfare, or to fish, animals, vegetation,

1 or any part of the natural habitat in which fish, animals, or wildlife may be found; or (B) a
2 substance defined as a hazardous substance under 42 U.S.C. 9601 - 9657 (Comprehensive
3 Environmental Response, Compensation, and Liability Act of 1980); "hazardous substance" does
4 not include uncontaminated crude oil or uncontaminated refined oil;

5 * Sec. 25. AS 46.35.200(4)(A) is amended to read:

6 (A) emission control [AIR EMISSIONS] permit - AS 46.14
7 [AS 46.03.150], 18 AAC 50.120;

8 * Sec. 26. AS 46.35.200(8) is amended to read:

9 (8) "state agency" means a state department, commission, board or other agency
10 of the state; for the purposes of this chapter "state agency" also means a local or regional air
11 pollution control authority established under AS 46.14.500 [AS 46.03.210].

12 * Sec. 27. AS 46.03.140, 46.03.150, 46.03.160, 46.03.170, 46.03.180, 46.03.190, 46.03.210,
13 46.03.220, 46.03.225, 46.03.230, and 46.03.245 are repealed.

14 * Sec. 28. REGULATIONS. The Department of Environmental Conservation may adopt regulations
15 as authorized under AS 46.14, enacted by sec. 4 of this Act, and other statutory authority, to implemen
16 changes made by this Act. Regulations adopted under this section may not take effect until the enabling
17 statute takes effect under sec. 31 or sec. 32 of this Act.

18 * Sec. 29. COOPERATION. The Department of Transportation and Public Facilities and the
19 Department of Environmental Conservation shall cooperate with each other as necessary to achieve
20 implementation of AS 36.30.097, enacted by sec. 3 of this Act, by July 1, 1994.

21 * Sec. 30. Sections 2 and 3 of this Act take effect July 1, 1994. (procurement)

22 * Sec. 31. AS 46.14.010, 46.14.020, 46.14.200(a) and (c) - (e), 46.14.205(a)(1) - (3) and (5),
23 46.14.210, 46.14.215, 46.14.225, 46.14.230, 46.14.235, 46.14.250, 46.14.255, 46.14.270, 46.14.280,
24 46.14.300, 46.14.400, 46.14.410, 46.14.420, 46.14.430, 46.14.500, 46.14.510, 46.14.520, 46.14.800 -
25 46.14.850, 46.14.900, and 46.14.990, enacted by sec. 4 of this Act, and secs. 1 and 5 - 29 of this Act
26 take effect immediately under AS 01.10.070(c).

27 * Sec. 32. AS 46.14.200(b), 46.14.205(a)(4) and (b), 46.14.220, 46.14.240, 46.14.245, 46.14.260,
28 46.14.265, 46.14.275, 46.14.285, and 46.14.290, enacted by sec. 4 of this Act, take effect November 15,
29 1993.

Davidson

REPRESENTATIVE TOM MOYER

DISTRICT 19 • 119 N. CUSHMAN ST., SUITE 203 • FAIRBANKS, AK 99701 • (907) 456-8161
International Trade & Tourism, Chair • State Affairs, Vice Chair • Resources, Member

MEMORANDUM

To: House Members
From: Representative Tom Moyer
Date: January 14, 1991
Re: HB 377, Clean Air Act Legislation

Clean Air -- Clean Air -- Get your Clean Air, Today!

After 10 years of debate in Congress, amendments to the Clean Air Act were passed in 1990. The amendments spell out the direction of anti-air pollution policy, however implementation of these policies still looms ahead of us.

Alaska already has strong clean air statues. However, unless states take the lead and implement air quality programs described in the Act, the Federal Government will, in November of 1993, take over management of Alaska's clean air policy. Alaska's federally-approved program and state implementation plan must be in place by then. It is important to note that for the first time, permits will be required from many small businesses. HB 377 is consistent with federal law in that it phases in implementation, therefore, some types of permits may not be required for months or years after the effective date. Managing our own program means we can better tailor it to local conditions.

The state must show that it has the authority to implement all federal standards to prevent a loss of federal transportation funds.

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Alaskans know better than anyone the steps we should take to keep our air as clean as possible. With HB 377, we can take the actions needed to keep the federal governments in Washington, D.C. and Seattle from requiring us to do it their way.

The bill spells out authorities the state needs in order to be consistent with federal laws in the areas of: permitting, fee collection, enforcement, penalties; and establishes a small business compliance assistance program.

Please join me in co-sponsorship of this important legislation.

DRAFT CSHB 377, BY REPRESENTATIVE TOM MOYER

~~ALASKA AIR QUALITY STATUTES~~

SECTION-BY-SECTION ANALYSIS

2/11/92

SECTION 1. PURPOSE

This section is self explanatory

SECTION 2. AMENDS AS 46 TO CREATE A NEW CHAPTER 14

AS 46.14.010 REGULATION AUTHORITY; EMISSION CONTROL STANDARDS

OBJECTIVE:

This section provides basic powers to the department to control air pollution sources and activities by establishing "out-of-stack" emission limits and ground level ambient standards for health protection. The first portion of sub-section (a) incorporates the language from the existing AS 46.03.140 proposed for repeal. The last sentence of (a) is new language

FEDERAL REQUIREMENT:

CAA Section 502(b)(5)(C) provides authority to impose emission limits in permits that are issued

CAA Section 112(j) specifies that state permit programs must incorporate federal emission limits or impose equivalent emission limits if EPA does not promulgate an emission limit for a type of source for which EPA is

STATE INTENT & EXPLANATION:

Retain existing authority and satisfy minimum requirements of the amended Clean Air Act.

to clarify authorities of the department to establish emission standards based upon either the need to prevent excessive ground level concentrations of an air contaminant, or the use of a pollution control technology that is reasonably available and economically justifiable for a particular source or class of air pollution sources to use.

scheduled to do so under the Clean Air Act.

CAA section 112(1) specifies minimum criteria for state programs executing the section 112 provisions of the Clean Air Act. Section 112(1)(5)(A) addresses emission limits.

CAA Section 165(a)(4) requires technology-based emission limits upon sources at a subject facility via a permit review evaluation which determines the "Best Available Control Technology" on a case-by-case basis.

AS 46.14.020 CLASSIFICATION OF FACILITIES OR SOURCES; REPORTING

OBJECTIVE:

This section incorporates the existing language from AS 46.03.150 (proposed for repeal) to provide authority to classify facilities and sources causing emissions of air contaminants as needed to ensure responsible and efficient management of air pollution. Subsection (b) provides authority to require reporting of information from those who emit air contaminants.

FEDERAL REQUIREMENT:

CAA Section 504 presents the minimum contents of a permit which includes reporting of information to assess compliance by the facility with the terms of the permit. CAA Section 503 discusses when permit applications are required to be submitted to the permitting agency.

STATE INTENT AND EXPLANATION :

Retain existing authorities and meet new minimum federal requirement. Existing authorities enable to department to require the submittal of information regarding air emissions and processes that cause air emissions. This authority exists regardless of the need for an entity to obtain an air permit. The authority needs to be retained to enable the department to perform its most basic function of protecting air

resources by having knowledge concerning activities that result in emissions of air contaminants.

AS 46.14.200 PERMITS FOR CONSTRUCTION, MODIFICATION, OR OPERATION

OBJECTIVE:

This section prohibits undertaking certain actions that cause air pollution without first obtaining a permit from the department. If a permit is required, activities must be performed in compliance with the terms of an authorized permit, order or other determination of the department. The section incorporates the authority that currently exists in AS 46.03.160(a) & (d)(proposed for repeal).

FEDERAL REQUIREMENT:

Permits to construct or modify are required under CAA Sections 165(a) and 112(g)(2).

Permits to operate are required under CAA Section 502(a).

STATE INTENT & EXPLANATION:

The state intends to execute a permit program that meets the minimum requirements of the Clean Air Act. Such a program must greatly expand the number of permits issued by the state because of the reduced minimum facility size that is now subject to permit requirements. The state generally intends to exempt any facility from permit requirements if a federal exemption is authorized unless there is strong basis of need, from the state's perspective, to retain the permit as a mechanism to contain or minimize an air pollution problem.

AS 46.14.205 FACILITIES AND SOURCES REQUIRING PERMITS

OBJECTIVE:

This section specifies which facilities are required to obtain a permit to construct and which

FEDERAL REQUIREMENTS:

Identical references as noted for 46.14.200

STATE INTENT & EXPLANATION:

The intent is to implement a permit program that satisfies the minimum federal requirements but

are required to obtain a permit to operate. Facilities that are required to obtain a permit to construct will be a sub-set of the facilities that must obtain a permit to operate.

Currently, the department's permit to operate is also used as authorization to construct. To be as timely as possible to permittees, while also complying with the new federal requirements, it is advantageous to issue a permit to construct separate from a permit to operate when the construction permit is necessary under federal law.

Please note the importance and special meaning of the term "major facility" used in subsection (b) and defined in section 46.14.990.

Permits to construct are issued for those facilities required by federal law and others that "have the potential to violate the ambient air quality standards or otherwise pose a threat to public health". The purpose of this clause within AS 46.14.205(a)(3) is to prevent the construction of a facility designed in such a manner that its emissions of air contaminants will immediately threaten public health and thereby require remediation

is also tailored as much as possible to meet Alaska's unique needs.

Implementing a "permit to construct" ~~separate from a~~ "permit to operate" will enable the department to issue a construction authorization in the amount of time currently taken, while the additional mandatory review steps for the permit to operate will be ongoing. In practice, the applicant will submit one permit application. The permit to construct, if required, would be issued within 30 days after completion of a public comment period and the permit to operate would be issued approximately 60-90 days, later after the draft permit undergoes the required federal review.

following construction. These facilities will be classified and listed in the department's regulations.

AS 46.14.210 EMISSION CONTROL PERMIT PROGRAM REGULATIONS

OBJECTIVE:

This section directs the department to adopt regulations which include all elements of the permit program expressly required by the Clean Air Act. Sub-section (b) incorporates the authority from the existing AS 46.03.160(g) (proposed for repeal).

FEDERAL REQUIREMENTS:

CAA Section 502(b). The proposed language addresses the federal requirements as shown below:

AS 46.14.210(a)(1): see
CAA Section 502(b), (b)(1);

AS 46.14.210(a)(2): see
CAA Section 502(b)(2),
503(b)(1);

AS 46.14.210(a)(3): see
CAA Section 502(b)(6);

AS 46.14.210(a)(4): see
CAA Section 504(a), (b), and
(c), 503(b)(2), 40 CFR
70.6(a)(iv)(A), (B)(Proposed);

AS 46.14.210(a)(5): see
CAA Section 502(b)(3)(A);

AS 46.14.210(a)(6): see
CAA Section 502(b)(5)-(10);

AS 46.14.210(a)(7): no federal
requirement. This is a state
initiative.

STATE INTENT & EXPLANATION:

The intent is to meet the minimum federal requirements and to create a mechanism to avoid the issuance of permits to those facilities which can contain their emissions below the applicable levels through voluntary process or operational restrictions.

AS 46.14.215 STATE POLICY; STATE AIR QUALITY PLAN

OBJECTIVE:

This section identifies the State Air Quality Control Plan and designates that the department will act in the Governor's behalf, with respect to the plans. All actions taken by the department must conform with the plan.

FEDERAL REQUIREMENTS:

CAA Sections 110, 502(b)(5)(C), 502(d), 40 CFR 52.70

STATE INTENT & EXPLANATION:

The State Air Quality Control Plan is the resource management document that identifies the specific methods to be employed by the department for reducing air pollution in areas that currently exceed public health standards. The plan establishes methods for maintaining acceptable air quality in the remaining portions of the state, and provides detailed guidance concerning the air permit program. The Plan is the official document reviewed by EPA in determining if the state program adequately implements the Clean Air Act. As such it becomes adopted into federal law at the time of approval and is then enforceable by EPA.

AS 46.14.220 TIME FOR SUBMISSION OF PERMIT APPLICATIONS

OBJECTIVE:

The section identifies when permit applications are due under the new permit program that takes effect November 15, 1993.

FEDERAL REQUIREMENTS:

CAA Section 503(a), and (c)

STATE INTENT & EXPLANATION:

The intent is to comply with federal requirements and to insure that the state maintains primacy over the federal government in this program.

AS 46.14.225 ADMINISTRATIVE ACTIONS REGARDING PERMITS

OBJECTIVE:

Identify the time schedule under which the department will take actions on permit applications. Sub-section (a) (1) adopts the concept that currently exist in AS 46.03.160(b) (proposed for repeal).

FEDERAL REQUIREMENTS:

AS 46.14.215(a)(1) ---- no applicable federal requirement

AS 46.14.215(a)(2) ---- see CAA Section 503(c)

AS 46.14.215(b) ---- see CAA Section 503(c)

STATE INTENT & EXPLANATION:

The intent is to comply with minimum federal requirements and to be as responsive as possible to the needs of Alaska industries for construction permits.

It is anticipated that the number of permits issued will triple or quadruple in comparison to 1991. This will place a tremendous burden upon the agency to issue permits during the years of 1993 to 1997. Thus phased scheduling is allowed for that start-up period.

AS 46.14.230 REVIEW OF PERMIT ACTION

OBJECTIVE:

This section identifies the remedies that are open to those who are aggrieved by a permit action.

FEDERAL REQUIREMENTS:

CAA Section 502(b)(6)

STATE INTENT & EXPLANATION:

Under the Clean Air Act, the state must provide an opportunity for an aggrieved party to obtain judicial review of a permit action. The state desires to retain the currently existing administration adjudication process as a first step for an aggrieved party. The administrative adjudication process is less costly and more

responsive for a party and therefore a more efficient first step remedy. The opportunity for judicial review is available after adjuratory review.

AS 46.14.235 SINGLE PERMIT

OBJECTIVE:

The section presents the concept that a facility, regardless of the number of air contaminant sources it contains, will secure only one air permit which will identify all applicable state and federal laws pertaining to the facility's air contaminant emissions. Although language from the existing AS 46.03.225 (proposed for repeal) is not used, the concept of one permit is retained.

FEDERAL REQUIREMENTS:

CAA Section 502(c)

STATE INTENT & EXPLANATION:

The intent is to comply with federal requirements. This provision is also in the best interest of Alaskans because all federal and state requirements will be consolidated within a single document; the permit.

AS 46.14.240 GENERAL OPERATING PERMITS

OBJECTIVE:

Incorporation of this elective provision within federal law should be extremely beneficial in accomplishing timely issuance of

FEDERAL REQUIREMENTS:

CAA Section 504(d) specifies that states may elect to issue general permits.

STATE INTENT & EXPLANATION:

General permits will be a method of quickly issuing individual permits for facilities that have

air permits for selected facility categories.

similar source configurations, do not pose a threat to air quality standards, or a facility in which the potential threat can be uniformly managed by specific permit conditions.--- Several general permits would be created; one for each group of similar facility configurations. Before the permit is issued to any subject facility, the draft general permit would undergo public and EPA review. It would then serve as a model that could be issued to a qualifying facility upon filing of a permit application.

AS 46.14.245 OBJECTION BY THE ADMINISTRATOR

OBJECTIVE:

This section delineates the role of the EPA Administrator in the permit review process.

FEDERAL REQUIREMENTS:

CAA Section 505(b)

STATE INTENT & EXPLANATION:

This is a required provision of any state approved air permit program. The intent is to comply with the federal requirement regarding permit review by EPA.

AS 46.14.250 PAYMENT OF FEES AND FEE STRUCTURE

OBJECTIVE:

Establish that permit fees will be assessed by the department. The structure of fee rates is proposed to be established by the department in regulation. The selected fee structure could be based upon a number of variables that either affect direct cost to the department or that are related to the quantity or toxicity of emitted air contaminants.

FEDERAL REQUIREMENTS:

CAA Section 502(b)(3)(A) and (B)

STATE INTENT & EXPLANATION:

The Clean Air Act requires that permit fees be collected and that such fees must be adequate to pay the direct and indirect costs for executing all tasks associated with the permit program. The fees can not be used to pay other air program costs (example: the costs of controlling carbon monoxide pollution in Anchorage and Fairbanks because this problem is not caused by "permitted facilities").

Specific fees are not established in the bill because it would be difficult or impossible to establish an equitable fee structure. There is only limited knowledge about the fiscal impact of potential fee amounts to specific industry groups especially for small businesses that must now obtain permits. Much more research and public review is needed for setting an equitable fee structure.

AS 46.14.255 PENALTY AND INTEREST FOR NONPAYMENT

OBJECTIVE:

This section establishes a deterrence for non-payment of fees.

FEDERAL REQUIREMENTS:

No specific requirement, but, authority for EPA to assess penalties and interest is set out in CAA Section 502(b)(C)(ii).

STATE INTENT & EXPLANATION:

Establishing an adequate deterrent to non-payment of permit fees will result in a low percent of non-payment and will keep overall fees lower and reduce costs for collection of debt.

Sec. 46.14.260 DURATION OF OPERATING PERMITS

OBJECTIVE:

The section identifies the maximum duration for any permit before renewal must be sought.

FEDERAL REQUIREMENTS:

AS 46.14.265(a) ---- see
CAA 502(b)(5)(B)
AS 46.14.265(b) ---- see
CAA 503(d)

STATE INTENT & EXPLANATION:

Currently air permits are issued for up to 5 years. It is expected that the same policies would be retained since this concept is reflected in federal law. Although most permits would be issued for 5 years, facilities that have compliance problems would be issued permits for lesser durations. Facilities that traditionally re-locate on a frequent basis would probably also be issued for shorter durations since the applicant would not be able to anticipate facility location for five years in advance.

AS 46.14.265 REOPENING OF PERMITS

OBJECTIVE:

The purpose of the section is to specify under what conditions a permit can be re-opened to incorporate new requirements.

FEDERAL REQUIREMENTS:

CAA Section 502(b)(9)
Also see CAA Section 502(b)(10)

STATE INTENT & EXPLANATION:

It is the intent of Congress that permits are closed documents once issued and thereby serve as a shield for the permittee by containing all applicable requirements of state and federal law. Congress also saw a need to delineate specific events when the issuing agency could re-open a permit to incorporate new requirements of federal law. The department's intent is to comply with the federal requirement to provide for a re-opener in these limited instances.

AS 46.14.270 TERMINATION, MODIFICATION, AMENDMENT, OR REVOCATION AND REISSUANCE OF PERMITS

OBJECTIVE:

This section specifies the procedure and causes for the department to terminate or change a permit after issuance.

FEDERAL REQUIREMENTS:

CAA Section 502(b)(5)(D)

STATE INTENT & EXPLANATION:

The intent is to comply with federal requirements and delineate explicitly "reasons for cause". Proposed language for this section is taken from the current language of AS 46.03.120 for waste disposal permits except for subsection (5) which is new language.

Sec. 46.14.275 FEDERAL TERMINATION, MODIFICATION, OR REVOCATION AND REISSUANCE OF PERMITS

OBJECTIVE:

This section directs the department to take all necessary actions to avoid federal pre-emption on a permit that may result in permit termination or modification.

FEDERAL REQUIREMENTS:

CAA Section 505(e)

STATE INTENT & EXPLANATION:

The intent is to avoid federal intervention in permits issued by the department. Inclusion of this provision in statute is not mandatory, but, serves a valid purpose.

AS 46.14.280 TEMPORARY OPERATIONS

OBJECTIVE:

The purpose is to provide a specific permitting mechanism for operations that typically relocate to numerous areas of the state depending upon short term contractual projects.

FEDERAL REQUIREMENTS:

CAA Section 504(e)

STATE INTENT & EXPLANATION:

There is a direct advantage in exercising this elective provision in federal law when recognizing the needs of certain Alaska industries. Typical facilities likely to receive permits using this provision include asphaltic concrete plants, portable incinerators and combustion devices used to clean petroleum contaminated soils. It may be desirable to extend the temporary period at any location beyond the one year stated in the proposed statute. Federal law does not limit the duration for a location, however there is a need

to stay within the bounds of "temporary".

AS 46.14.285 PERMIT AS A SHIELD

OBJECTIVE:

This section delineates that an issued permit serves as a shield for the permittee.

FEDERAL REQUIREMENTS:

CAA Section 504(f)

STATE INTENT & EXPLANATION:

The intent is to comply with federal requirement, but, include certain exceptions to the shield that must be retained to protect public health and the environment during unanticipated catastrophic events.

AS 46.14.290 TIMELY AND COMPLETE APPLICATION AS A SHIELD

OBJECTIVE:

This section delineates that filing a timely and complete permit application allows the owner and operator to continue lawful operation of the facility in the event that the department fails to issue or renew the permit.

FEDERAL REQUIREMENTS:

CAA Section 503(d)

STATE INTENT & EXPLANATION:

This provision is especially important for initial program start-up when the department will not be able to issue all of the permits immediately. This will also allow facilities that are not currently required to have a permit to continue operation without the permit. It is quite important to provide this assurance to permit applicants.

AS 46.14.300 MOTOR VEHICLE POLLUTION

OBJECTIVE:

This section would continue the existing authorities in AS 46.03.190 (proposed for repeal) to control emissions of air contaminants from motor vehicles.

FEDERAL REQUIREMENTS:

CAA Section 187(a)(4)
Also see CAA Section 182(c)(3)

STATE INTENT & EXPLANATION:

The department currently performs several functions relating to control of vehicular emissions. The entirety of 18 AAC 52 focuses upon vehicular emission controls authorized under the current AS 46.03.190. The language proposed here simply up-dates the existing statute and does not provide any new authorities in this area.

AS 46.14.400 DEVELOPMENT OF PROGRAM (SMALL BUSINESS ASSISTANCE PROGRAM)

OBJECTIVE:

This section establishes the small business assistance program to provide aid to small businesses in complying with the requirements of the Clean Air Act.

FEDERAL REQUIREMENTS:

CAA Section 507(a)

STATE INTENT & EXPLANATION:

Providing this assistance to small businesses affected by the Clean Air Act will reduce the financial burden upon these businesses, increase their knowledge and understanding of obligations placed upon them by the Act and assist them in controlling and preventing release of air contaminants to the atmosphere. The small business assistance program is a required feature of any federally approved state permit program.

AS 46.14.410 SCOPE OF PROGRAM

OBJECTIVE:

This section lists the specific tasks that will be performed by the small business assistance program staff.

FEDERAL REQUIREMENTS:

CAA Section 507(a)(1)-(7)
Also see - CAA Section 507(d)

STATE INTENT & EXPLANATION:

This assistance program is to be viewed as a substantial aid to those entities that are least knowledgeable and least capable of coping with the technical, fiscal and legal provisions of the Clean Air Act. This section as drafted will provide this assistance to the greatest number of Alaska industries as possible. The federal definition of a small business for eligibility of this assistance is quite restrictive. This is so because of the congressional desire to contain cost of the assistance in recognition that the program is to be funded by the collected permit fees. The department has suggested statutory language that will expand the definition of a small business as much as allowed under the Act to make this assistance available to a larger portion of our small businesses. Furthermore, language is suggested to enable yet an additional expansion of the service if the Legislature were to allocate additional monies to this activity from the general fund. Such monies may originate

from the settlement of enforcement cases as discussed in AS 46.14.260(c).

AS 46.14.420 POWER TO LIMIT PROGRAM

OBJECTIVE:

This section identifies that the Administrator of EPA and the department can exclude certain businesses from the assistance program, that would otherwise be eligible, if certain criteria are met.

FEDERAL REQUIREMENTS:

CAA Section 507(c)(3)

STATE INTENT & EXPLANATION:

The intent is to incorporate this elective provision into state law as described in federal law which will enable the state to exclude a small business facility or group of similar facilities from the assistance program. The facility or group will be excluded only if it is determined by EPA, the U.S. Small Business Administration and the department that the facility or group, in light of its technical and financial capabilities, is not in need of the assistance provided by this program.

AS 46.14.430 COMPLIANCE ADVISORY PANEL

OBJECTIVE:

This section establishes an oversight panel to guide the small business assistance program

FEDERAL REQUIREMENTS:

CAA Section 507(e)

STATE INTENT & EXPLANATION:

This language has been drafted in recognition of the separation of powers criteria in Alaska law. It is possible that additional

and to report its findings to the EPA Administrator.

discussions and negotiations will need to occur with EPA to clarify if the proposed language satisfies the federal obligations.

The language regarding semi-annual meetings is not specified in federal law, but was included to contain the annual expenses of the panel in recognition of their limited duties.

AS 46.14.500 LOCAL AIR QUALITY CONTROL PROGRAMS

OBJECTIVE:

This section establishes a mechanism for local governments or groups of local governments to implement all or parts of this chapter within their respective jurisdictions. This language is intended to replace the existing AS 46.03.210 (proposed for repeal).

FEDERAL REQUIREMENTS:

There is no direct requirement in federal law. CAA Sections 110(a)(2)(E) and 502(d) do discuss the concept of local programs. The state remains responsible for achieving the goals of a permit program even if it is executed by a local government entity.

STATE INTENT & EXPLANATION:

The proposed language represents some major conceptual differences in comparison to that which exists in AS 46.03.210. This language provides much greater flexibility to the department to implement a cooperative program with any significantly sized local government for carrying out all or some of the provisions of this chapter. The existing statute would not allow any local government to assume responsibility for implementing the permit provisions of the amended Clean Air Act. The proposed language establishes a vehicle for achieving this interagency program. Called a

"cooperative agreement", this document will delineate the respective responsibilities of each agency and enable the department to approve the activities of the local program.

AS 46.14.510 INADEQUACY OF LOCAL PROGRAM

OBJECTIVE:

This establishes the mechanism for identifying and reconciling inadequacies of a local government program. The section incorporates some of the language that currently exists in AS 46.03.220 (proposed for repeal).

FEDERAL REQUIREMENTS:

CAA Section 110(a)(2)(E) specifies that the state is the responsible entity for implementing the requirements of the Clean Air Act.

STATE INTENT & EXPLANATION:

The intent of the section remains the same as the existing statute, however, the provisions are substantially changed primarily to work with the concept of a cooperative agreement.

AS 46.14.520 STATE AND FEDERAL AID

OBJECTIVE:

The proposed language reflects to a large degree the existing language of AS 46.03.230 (proposed for repeal)

FEDERAL REQUIREMENTS:

CAA Section 105 authorizes federal grants for air pollution control efforts implemented by state and local governments.

STATE INTENT & EXPLANATION:

The proposed statute includes only minor changes to the existing language. Although this provision of law is currently only used to a minor degree, it is anticipated that this may be executed on a much broader basis with the new permit program if some of the local governments desire to become partners in

implementing the permit program. This statute would allow the state to provide all or a portion of the monies needed to carry out air permit functions by local government entities. -

AS 46.14.800 PUBLIC RECORDS

OBJECTIVE:

This section provides that documents in the department's possession are public records with very few exceptions (see - AS 46.14.810).

This section is more expansive than existing public records laws in that this law recognizes fewer exceptions for process and production related information.

FEDERAL REQUIREMENTS:

CAA Section 503(e)

STATE INTENT & EXPLANATION:

The intent to comply with federal requirements. All permit records are public records except in those cases where confidentiality is necessary to protect a competitive position or to safeguard company information relating to confidential information about markets, processes or products.

AS 46.14.810 CONFIDENTIALITY OF RECORDS

OBJECTIVE:

This section identifies the criteria that must be met to exclude documents from being public records. The language incorporates the existing language in AS 46.03.180

FEDERAL REQUIREMENTS:

CAA Section 503(e)

CAA Section 114(c)

STATE INTENT & EXPLANATION:

This language is intended to meet the federal requirements. In general, federal regulations allow more information to be held as confidential in comparison to existing Alaska law. The proposed language will not alter

(proposed for repeal) with some clarifications.

existing state law, except for the items specifically noted here. Language is proposed to address situations when ambient monitoring and meteorological data can be considered confidential. This would protect the uncontrolled use of the collected data by entities that do not contribute to the cost of the data collection but would stand to benefit by its use in a reduced overall cost to themselves for preparation of a permit application.

AS 46.14.820 RESPONSIBILITIES OF OWNERS AND OPERATORS

OBJECTIVE:

This section is to clarify the respective responsibilities and liabilities of facility owners and operators for compliance with the provisions of this chapter.

FEDERAL REQUIREMENTS:

There is no applicable federal citation except that the state must be able to enforce upon responsible parties for violations of this chapter.

STATE INTENT & EXPLANATION:

The intent is to delineate the responsibilities and liabilities of facility owners and operators.

Most of the obligations in the Act are imposed on both owners and operators. This allows the department to secure expeditious compliance, without waiting for private parties to determine who, among them will effectuate compliance. However, this section is needed to avoid duplicative efforts by the private parties.

AS 46.14.830 ADMINISTRATIVE PENALTIES FOR AIR POLLUTION

OBJECTIVE:

This section would create a mechanism for the department to assess penalties administratively for violations of this chapter, regulations adopted under this chapter and for conditions of permits authorized by this chapter.

FEDERAL REQUIREMENTS:

none - see explanation for more detail

STATE INTENT & EXPLANATION:

Although there is no direct federal requirement, the Clean Air Act substantially enhances the enforcement authority of the U.S. Environmental Protection Agency. These enforcement authorities are found in CAA Sections 113, 205, 304, and 307. These powers are quite encompassing and include administrative penalties and field citations. Of greatest concern is that the U.S. EPA can determine that the state's enforcement is inadequate and then take action to intervene or supersede the state enforcement position with respect to compliance with state law with any individual permit issued by the department.

In drafting this proposed section, the state's intent is to develop an enforcement program that will be viewed as efficient in execution, effective in deterring violations and substantive in fine amounts to avoid a "pay to pollute" attitude by industries. Such a program need not be of equal par with EPA's enforcement program, but it must be of adequate backbone

if the state is to prevent frequent or recurrent intervention by the EPA.

AS 46.14.840 CLEAN AIR PROTECTION FUND

OBJECTIVE:

This section establishes a special fund for the exclusive purpose of receiving permit fees, penalties and interest payments to be used to pay the costs of executing the permit program.

FEDERAL REQUIREMENTS:

CAA Section 502(b)(3)(C)(iii)

STATE INTENT & EXPLANATION:

This is a federally mandated provision for any approved state permit program. The department's intent is to comply with the minimum requirements of federal law.

AS 45.14.850 SPECIAL ACCOUNT

OBJECTIVE:

Monies received as a result of settlements from violations of law, including permit provisions, would be deposited in the general fund. The department may request appropriation by the Legislature of these monies for use in carrying out the air quality program of this chapter.

FEDERAL REQUIREMENTS:

N/A

STATE INTENT & EXPLANATION:

The intent is to keep track of these within the general fund special account and request appropriations to support the air quality program.

AS 46.14.900 LIMITATION OF POWERS

OBJECTIVE:

This section describes the limits upon powers authorized by this chapter. The language reflects the contents of existing AS 46.03.245 (proposed for repeal).

FEDERAL REQUIREMENTS:

no applicable federal citation

STATE INTENT & EXPLANATION:

The intent is to retain the existing limits upon authority. A language addition was made to exclude air quality within residential dwellings from the purview of the department.

AS 46.14.990 DEFINITIONS

OBJECTIVE:

This section defines terms used within the chapter.

FEDERAL REQUIREMENTS:

N/A

STATE INTENT & EXPLANATION:

Intent and explanation not necessary.

SECTIONS 3 THROUGH 14

OBJECTIVE:

Amend:
AS 28.10.041(a)(10)
AS 28.10.423

FEDERAL REQUIREMENTS:

N/A

STATE INTENT & EXPLANATION:

The intent is to amend existing statutes to implement the new Chapter 14 of Title 46.

AS 29.35
AS 29.35.200(b)
AS 29.35.210(a)
AS 29.35.210(b)
AS 37.05.146(4)
AS 44.46.025(a)(2)
AS 44.62.330(a)(44)
AS 46.03.760(f)
AS 46.03.765
AS 46.03.780(a)

Add Clean Air Protection Fund to
program receipt authority.

to incorporate reference to the
new Chapter 14 of Title 46 of
Alaska Statutes.

SECTION 15 AMEND AS 46.03.790(a)

OBJECTIVE:

Expand the type of actions that
become subject to criminal
prosecution.

FEDERAL REQUIREMENTS:

CAA Section 113(c)(2)

STATE INTENT & EXPLANATION:

The intent is to comply with
federal requirements.

SECTION 16 AMEND AS 46.03.790 TO ADD (h)

OBJECTIVE:

Make criminal violations of this
chapter subject to a maximum fine
of \$ 10,000 per offense.

FEDERAL REQUIREMENTS:

Proposed 40 CFR 70.11
FR May 10,1991
Also see CAA Section 502(b)(5)(E)

STATE INTENT & EXPLANATION:

The intent is to comply with
federal requirements.

SECTIONS 17 THROUGH 19

OBJECTIVE:

Amend: AS 46.03.850(a)
AS 46.03.875
AS 46.03.890(b)
AS 46.08.075(a)
to incorporate reference to the
new Chapter 14 of Title 46 of
Alaska Statutes

FEDERAL REQUIREMENTS:

There is no applicable federal
citation

STATE INTENT & EXPLANATION:

The intent is to amend existing
statutes to implement the new
Chapter 14 of Title 46.

SECTIONS 20, 21 AND 22 AMEND AS 46.08.075, AS 46.08.900(6) AND AS 46.09.900(4)

OBJECTIVE:

Amend the definition of hazardous
substance to include elements or
compounds that enter the
atmosphere.

FEDERAL REQUIREMENTS:

There is no applicable federal
citation.

STATE INTENT & EXPLANATION:

Releases of air contaminants can
and do result in direct and
immediate damage to public health
and the environment. This
language change is essentially a
house keeping function. The
Attorney General's Office has
interpreted the existing
definition of hazardous substance
to include emissions to the
atmosphere.

SECTION 23 AND 24 AMENDS AS 46.35.200(4) AND AS 46.35.200(8)

OBJECTIVE:

Amend AS 46.35.200(4) to incorporate air permits issued under Chapter 14; amends reference to local programs under Chapter 14.

FEDERAL REQUIREMENTS:

There is no applicable federal citation.

STATE INTENT & EXPLANATION:

The intent is to amend existing statute to incorporate the new Chapter 14 of Title 46.

SECTION 25

OBJECTIVE

This section repeals existing statutes for air quality control.

FEDERAL REQUIREMENTS:

There is no applicable federal citation.

STATE INTENT & EXPLANATION:

The new Chapter 14 replaces all existing statutes for air quality control except AS 46.03.170. There is no longer a purpose for AS 46.03.170 since EPA has taken a position that they will not endorse any actions taken by the department under this authority. As discussed in AS 46.14.215, the State Plan becomes enforceable by EPA. EPA will not approve a plan incorporating this authority.

SECTION 26

OBJECTIVE:

This section authorizes the department to adopt regulations to implement this chapter.

FEDERAL REQUIREMENTS:

There is no applicable federal citation.

STATE INTENT & EXPLANATION:

The intent is to enable the department to fully implement the programs described in the chapter.

SECTIONS 27 AND 28

OBJECTIVE:

These sections provide for an effective date for each of the respective statutes within this bill.

FEDERAL REQUIREMENTS:

N/A

STATE INTENT & EXPLANATION:

Several statutes within section 2 of the bill require a delayed effective date to provide time to develop and adopt implementing regulations.

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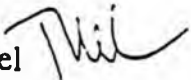
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MEMORANDUM

January 16, 1992

SUBJECT: Sectional Description for HB 377
Clean Air Act Amendments

TO: Representative Tom Moyer

FROM: Terri Lauterbach 
Legislative Counsel

Sec. 1. Findings.

Sec. 2. Amends a statutory list of dedicated funds to add the new air pollution control fund that is set up in sec. 8. Federal law at 42 U.S.C. 7661a(b)(3)(C)(iii) requires that air pollution permit fees be used only for the air pollution permit program, so a dedicated fund to receive these fees is necessary for compliance with the federal Clean Air Act. A need to comply with federal law is recognized as an exception to the usual prohibition against dedicated funds under art. IX, sec. 7, Constitution of the State of Alaska.

Sec. 3. Amends the fee-charging authority of DEC so that DEC may charge fees if it operates a vehicle inspection and maintenance program. Federal law at 42 U.S.C. 7661q(b)(3)(A) requires that both direct and indirect costs be covered by permit fees, so I have added that language in paragraph 2. You will note that current language of AS 44.46.025(a) limits fees to those covering direct costs.

Sec. 4. Adds a declaration of policy that the legislature intends for DEC to operate a program that complies with federal law. Also requires DEC to submit the appropriate plans to the federal government.

Sec. 5. Directs DEC to adopt a permit program that complies with federal requirements.

Sec. 6. Incorporates some federal regulatory and statutory requirements into DEC's current permit program.

Sec. 7. New Sec. 46.03.163 adds permit renewal procedures to the statutes. New Sec. 46.03.165 adds termination and modification procedures to the statutes.

Sec. 8. New Secs. 46.03.175 and 46.03.177 establish the new air pollution control fund and require DEC to charge permit fees that meet the requirements of federal law, which is quite detailed on the matter of permit fees. They also allow DEC to charge a processing fee if it turns out that a permit is not required. New Sec. 46.03.179 allows DEC to have a registration program to gather information.

Sec. 9. Clarifies the requirements for local air pollution control programs.

Sec. 10. Clarifies the department's ability to retain state jurisdiction over air contaminant sources.

Sec. 11. New Sec. 46.03.227 requires DEC to have a small business assistance program. New Sec. 46.03.228 establishes a small business compliance advisory panel. The detail contained in Sec. 46.03.228(a)(3) is required because federal law simply refers to appointments by "majority and minority leadership," a phrase that is not always clear when applied to the Alaska State Legislature. New Sec. 46.03.229 is the definition used in federal law.

Sec. 12. A technical amendment necessitated by the new subsection (g) that is added by sec. 13 of the draft.

Sec. 13. Sets the level for civil fines relating to the air quality program. The \$10,000 per day level is required under federal law at 42 U.S.C. 7661a(b)(5)(E), so this subsection is necessary to separate air quality fines from the \$5,000 per day fines otherwise applicable under AS 46.03.760(a).

Sec. 14. Sets the level for criminal fines relating to the air quality program at a minimum of \$10,000 per day as accomplished in sec. 13 for civil fines. (A fine for a class A misdemeanor in Alaska is currently a maximum of \$5,000.) Federal law at 42 U.S.C. 7661a(b)(5)(E) requires "appropriate criminal penalties" to enforce the state program, without further detail, so this change may not be necessary. However, it seemed to me to be appropriate because federal requirements necessitated increasing the current \$5,000 civil fine to \$10,000.

Sec. 15. Repeals the variance system in current law. Federal law does not appear to allow variances. If waivers are possible, DEC will have authority to grant them under the general statutory directive in sec. 5 of the draft that they implement the permit program in a manner that complies with federal law.

Sec. 16. Contains directions from the legislature as to the time period in which the executive branch should be implementing the laws that would be enacted by this draft. The deadlines are the minimums required under federal law.

Sec. 17. Governs local programs that are operating when this Act takes effect.

Sec. 18. Gives an immediate effective date to the provision under which a small business assistance program is required so that it can be in place by the federally-mandated date of November 1992. Also gives an immediate effective date to the directives contained in sec. 16 so that DEC has authority to begin implementation of the rest of the laws that would be enacted by this draft.

Sec. 19. Gives the remainder of the draft a November 1993 effective date, the latest allowed by federal law. Please note that this does not mean that the state will necessarily be requiring permits from all businesses for all pollutants as of that date. It merely means that the federally-approved permitting program and state implementation plan must be in place by then. Federal law allows approval of programs and plans that call for a phased-in implementation of the requirements of federal law. So, some types of permits may not be required for months or years after November 1993.

TML:pl
92-019.plm

To: Tom
From: Christine
Date: March 20, 1992
Re: CS HB377 (JUD)

The following sections are ones in which HB377 gives DEC more authority than federal mandates require, select favorable options not available to EPA, or makes other accommodations not addressed in federal statutes.

46.14.010 Emission Control Regulations

The first sentence of this section is taken from existing statute. It reads "After public hearing, the department may adopt regulations under this chapter as necessary to prevent, abate, control or identify air pollution due to emissions, including regulations setting emission standards, performance standards, and limitations." Now, industry is saying that the DEC should not have this authority. We argue that for years, industry has been arguing that Alaska should not be lumped into general EPA policy because we are a unique state and need flexibility to fashion policy to address these differences. For instance, we are exempt from acid rain provisions and the wetlands policy. That's okay with industry. The state does not abuse this existing authority as evidenced by our 20 year track record of only creating ammonia standards (Kenai) and hydrogen sulfide standards. HB 377 continues existing authority.

The second sentence of that section allows DEC to base those standards on human health and welfare in addition to available technology. The feds reference technology based standards as of the past four years as a second layer to the health risk standard. For example, if a level of "x" parts per million would cause no more than 1 sick person out of a million, that would be considered the health based standard. In addition to that level "x", a facility would be required to reduce "x" by a percentage based on what technology is available -- such as a pollution control device. It is good public policy that the DEC is authorized to, like the federal government, base these standards on human health and welfare as well as available technology.

AS 46.14.225 Administrative Actions Regarding Permits

To be as responsive as possible to the needs of industry for construction (reconstruction) permits. Instead of having to wait for an operating/construction permit, industry will have the advantage of beginning construction while the operating permit is in review. Industry supports this change that is not required by the federal act.

AS 46.14.240 General Permits

Here we have selected an option to issue general permits that the feds would not offer if they ran the air quality permit program.

AS 46.14.255 Penalties and Interest for Nonpayment

If EPA runs our air quality program, then there will be a penalty for nonpayment assessed at 50% of the permit fee. The states are not required to have a penalty for nonpayment. By having this provision, we could assess only 5% per month, up to 25% of the fee, which is a less onerous structure than the feds.

AS 46.14.500 Local Air Quality Control Programs

Unlike the feds, HB 377 would allow local municipalities to run their own program. Industry has not voiced any opposition to this provision.

AS 46.14.820 Responsibilities of Owners and Operators

The federal law makes both the owner and operator apply for a permit. The state exempts the owner and operator from duplicating efforts. Industry supports this accommodation.

AS 46.14.830 Administrative Penalties

This section grants admin. penalty authority to DEC. Under the new federal act, the feds have increased enforcement powers. DEC would like to have the authority, although not as broad, along parallel grounds to give them the enforcement tools necessary to keep the EPA "out of our backyard" so to speak. No agreement on this provision.

AS 46.08.075 Definition of Hazardous Substance

The title was tightened to prevent this from becoming omnibus legislation to provide additional access to 470 funds. The provision in HB 377 is to clarify in statute what grounds the DEC has been accessing 470 funds. There is an AG's opinion that support this change. It is considered a housekeeping measure. Industry suggested this change and supports this section.

HOUSE COMMITTEE REPORT

2-24-92

(9)
Date Referred: 1/13/92

FURTHER REFERRALS:

Judiciary
Finance

Date of Committee Action: 2/20/92

The RESOURCES Committee considered: HB 377

HOUSE BILL NO. 377 AIR POLLUTION CONTROL PROGRAM

"An Act relating to prevention, abatement, and control of air pollution; and providing for an effective date."

RECOMMENDATIONS:
be replaced with CS HB 377 (RES) the same title
 a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

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

APPROVES PREVIOUS: (Dept/Date) _____

fiscal impact DEC

fiscal note(s) _____

zero fiscal note _____

zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>[Signature]</i> FINKE-STEIN	<input checked="" type="checkbox"/>	<i>[Signature]</i> LINCOLN		<input checked="" type="checkbox"/>	
<i>[Signature]</i> MOYER	<input checked="" type="checkbox"/>	<i>[Signature]</i> CARNEY		<input checked="" type="checkbox"/>	
<i>[Signature]</i>	<input checked="" type="checkbox"/>	<i>[Signature]</i> LEMAN		<input checked="" type="checkbox"/>	
		<i>[Signature]</i> HUBSON		<input checked="" type="checkbox"/>	

[Signature]
VICE-CHAIRMAN'S SIGNATURE

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO CSHB 377 (RES)

Revision Date: _____
Title: Alaska Air Permit Statutes

Department Affected: Environmental Conservation
BRU: Division of Environmental Quality

Sponsor: Representative Tom Moyer
Requestor: Resources Committee

Component: Air Quality Management

COMPONENT SERIAL NO. 1 | 4 | 2 | 18

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	728.7	180.0	603.3	315.9	243.3	260.2
TRAVEL	180.2	0.0	106.3	48.7	151.5	9.5
CONTRACTUAL	48.2	(60.0)	(393.1)	20.0	270.7	0.0
SUPPLIES	56.0	0.0	35.7	16.1	145.7	8.8
EQUIPMENT	207.0	(120.0)	0.0	(34.2)	30.0	60.0
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	1220.1	0.0	352.2	366.5	841.2	338.5

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

REVENUE (note 2)	1,320.1	0.0	894.3	366.5	841.2	506.5
------------------	---------	-----	-------	-------	-------	-------

FUNDING: (Thousands of Dollars) (Incremental Increases)

GENERAL FUND	0 (Note3)	0.0	0.0	0.0	(38.3)	(168.0)
FEDERAL FUNDS	(100.0)	0.0	(542.1)	0.0	0.0	0.0
OTHER	1,320.1	0.0	894.3	366.5	879.5	506.5
TOTAL	1220.1	0.0	352.2	366.5	841.2	338.5

POSITIONS:

FULL-TIME	18.0	0.0	6.0	0.0	0.0	0.0
PART-TIME	0.5	0.0	0.0	0.0	0.0	0.0
TEMPORARY	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of current year impact:

ANALYSIS: (Attach a separate page if necessary.)

- Note 1. FY93 General Fund program receipts are contained in the Governor's FY93 Operating Budget.
 Note 2. Revenue Fund Source consists of program receipts deposited in the General Fund. Following passage of this bill, program receipts are to be deposited in the Clean Air Protection Fund.
 Note 3. No additional general funds will be required for this program over FY92 levels.

Prepared by: Leonard D. Verrelli
 Division: Environmental Quality

Phone: 465-5100
 Date: 20-Feb-92

Approved by Commissioner: [Signature] for [Signature]
 Agency: Department of Environmental Conservation U Date: 2/21/92

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

FISCAL NOTE COMPUTATIONS

OVERVIEW

The current statewide program consists of 30.5 professionals and three clerical persons. This staff level includes six positions created in mid FY92 with additional grant funds from EPA for Clean Air Act implementation. Because the new permit program requires a major restructuring of the existing permit program, and at least tripling of the number of state air quality permits, the department must obtain significant staff increases to accomplish the mandates of the Act. Failure to develop and implement the new permit program will result in withdrawal of federal highway construction funds. In addition, the Act mandates that permit program direct and indirect costs be completely funded by operating permit fees.

Twelve (12) new technical positions and four (4) administrative support positions would perform the program development work. Development work to be accomplished in FY93 and early FY94 includes a complete rewrite of the regulations in 18 AAC and the associated State Air Quality Control Plan, and working with the regulated community to adopt a program that meets Alaskan as well as federal needs.

Another major aspect of the permit program is small business support function. The Small Business Assistance program will provide technical and compliance assistance on air pollution matters, and establishes a state small business liaison to provide direct oversight. In addition, the Act creates a compliance advisory panel composed of appointees from the Executive and Legislative branches to determine the effectiveness of the program. In FY93, the Small Business Assistance program would fund one full-time Environmental Specialist, one part-time Clerk Typist, one position for the small business liaison, staff travel, contractual, publication and distribution of information material, and the direct (but not salary) costs of quarterly meetings of the Compliance Advisory Panel.

INCREMENTAL EXPENDITURE PROJECTION

Salary projections are based on the FY93 operating budget increment request. For projections beyond FY93, specific line item budget needs are based on funding required for new personnel and shifts in program tasks as the permit restructuring progresses from the development phase to the operations phase. The employee estimate is derived from the year-by-year workload evaluation based on the deadlines established in the Clean Air Act, the number of permits to be issued, and the increases in the associated work tasks, such as inspections and facility report review. For FY94 and beyond, personnel estimates are based on a management structure that shifts from central office program development to one that is primarily implemented by the department's regional offices, beginning in FY96.

	FY93	FY94	FY95	FY96	FY97	FY98
Full-time positions added	18	0	6	0	0	0
Part-time positions added	.5	0	0	0	0	0

Incremental costs

Line Item	FY93	FY94	FY95	FY96	FY97	FY98
71000 Personal	728.7	180.0	603.3	315.9	243.3	260.2
72000 Travel	180.2	0.0	106.3	48.7	151.5	9.5
73000 Contract	48.2	(60.0)	(393.1)	20.0	270.7	0
74000 Supplies	56.0	0.0	35.7	16.1	145.7	8.8
75690 Equipment	207.0	(120.0)	0.0	(34.2)	30.0	60.0
Year	FY93	FY94	FY95	FY96	FY97	FY98
Total Cost Projection	1220.1	0.0	352.2	366.5	841.2	338.5

INCREMENTAL REVENUE PROJECTIONS

Projected revenues for the FY93 and FY94 years are directly derived from the budgets prepared, and interim program receipts projections. Revenue projections for operating permit program for FY95 and later are comprised of two components: permit fees assessed to existing facilities and permit fees assessed to new facilities. The fee structure used to estimate revenue has three components: a base cost of \$1500 for a permit to a "small" affected facility, \$25 per ton of regulated air contaminant per year emitted by existing facilities (larger than 100 tons per year), and a fee "cap" at 4000 tons per year. From emission estimates of currently permitted facilities, the fee schedule was applied and "phased in" over three years. The estimate for new facilities revenues was derived from an assumption of composition of these sources, 80 percent of which emit less than 100 tons per year, the remainder emitting less than 500 tons per year. These facilities will be permitted starting in the third year of the program. Note that program receipts directly offset any expenditure that would otherwise be required from general funds.

Projected Incremental Revenues

Year	FY93	FY94	FY95	FY96	FY97	FY98
General Fund Match	0.0	0	0	0	(38.3)	(168.0)
CAA Supplemental funds <100.0>		0	<542.1>	0	0	0
Interim fees, current	1320.1	0	(617.3)	(330)	(424.1)	0
Fees, current facilities	0	0	1511.6	696.5	864.4	61.9
Fees, new facilities	0	0	0	0	439.2	444.6
Year	FY93	FY94	FY95	FY96	FY97	FY98
Total Funds	1220.1	0	352.2	366.5	841.2	338.5

OVERVIEW OF TOTAL PROGRAM DEVELOPMENT

To fully evaluate the effects of the requirements of the Clean Air Act on the air quality management program, the total program costs, personnel, and funding are presented. Note that a number of positions which are currently funded by federal grants and state matching funds will be funded by permit program fee revenue after the implementation of the new program.

Year	FY92	FY93	FY94	FY95	FY96	FY97	FY98
FTE	33.5	52.0	52.0	58.5	58.5	58.5	58.5
Total Costs							
Personal	1646.5	2375.2	2555.2	3158.5	3474.4	3717.7	3977.9
Travel	175.8	356.0	356.0	462.3	511.0	662.5	672.0
Contract	816.3	864.5	804.5	411.4	431.4	702.1	702.1
Supplies	68.2	124.2	124.2	159.9	176.0	321.7	330.5
Equipment	52.2	259.2	139.2	139.2	105.0	135.0	195.0
Total	2759.0	3979.1	3979.1	4331.3	4697.8	5539.0	5877.5
Total Program Funding							
Year	FY92	FY93	FY94	FY95	FY96	FY97	FY98
Federal	1534.2	1434.2	1434.2	892.1	892.1	892.1	892.1
G.F. Match	1174.1	1174.1	1174.1	1173.5	1173.5	1135.2	967.2
P/R	49.7	1370.8	1370.8	754.1	424.1	0	0
C.A. Fund	0	0	0	1511.6	2208.1	3511.7	4018.3
Total	2759.0	3979.1	3979.1	4331.3	4697.8	5539.0	5877.5

Position Title ENVIRONMENTAL ENGINEER II		No. of Positions 4	Range / Step 17A	Org. Unit GG
Time Status Full-time	Staff Months 24	Location Various		Election District Various
TYPE OF EXPENDITURE		Amount		
Salary		78.6		
Benefits		33.6		
Premium Pay				
Other				
Total Personal Services		114.2		
Travel		15		
Contractual		10		
Commodities		4		
Equipment		20		
Other				
Total Cost		163.2		
FUNDING SOURCE FOR TOTAL COST				
Federal Receipts	1002			
G.E. Match	1003			
General Fund	1004			
I.A. Receipts	1007			
CIP Receipts	1061			
Other	PROGRAM RECEIPTS	163.2		
		<p>Justification</p> <p>The new Clean Air Act of 1990 requires all states to establish a completely new operating permit program which takes into account small sources never permitted before, includes greater public participation in the permit process, and requires the collection of fees to completely offset all costs for the review, issuance, and maintenance of the permit program. The Act also requires states to establish a Small Business Assistance Program which aids small businesses in permit process, provides technical and compliance assistance, and provides information about pollution prevention methods.</p> <p>The Environmental Engineer IIs will assist senior staff to:</p> <ol style="list-style-type: none"> 1. develop revised regulations, recognizing small business concerns 2. identify and assist new permittees 3. develop standardized permit applications 4. prepare draft permits 5. provide assistance and information to permit applicants 6. develop the small business and pollution prevention programs 7. training regional and district permit liaisons 8. conduct inspections and compliance certifications 9. develop regulations to minimize release of hazardous air pollutants, and 10. establish a quality control/quality assurance audit program. 		

Request For New Position

AGENCY Environmental Conservation

BRU Environmental Quality

COMPONENT Air Quality Management

FY 93

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Revised Date: _____

Position Title CLERK TYPIST III		No. of Positions 2.5	Range / Step UBA	Org. Unit GG
Time Status *	Staff Months 15	Location Various		Election District Various
TYPE OF EXPENDITURE		Amount		
Salary		27.9		
Benefits		13.2		
Premium Pay				
Other				
Total Personal Services		41.1		
Travel		0		
Contractual		5		
Commodities		2.5		
Equipment		15		
Other				
Total Cost		63.6		
FUNDING SOURCE FOR TOTAL COST				
Federal Receipts	1002			
G.F. Match	1003			
General Fund	1004			
IA Receipts	1007			
CIP Receipts	1061			
Other	PROGRAM RECEIPTS	63.6		
* Full-time (2) Part-time (.5)		Justification The new Clean Air Act of 1990 requires all states to establish a completely new operating permit program which takes into account small sources never permitted before, includes greater public participation in the permit process, and requires the collection of fees to completely offset all costs for the review, issuance, and maintenance of the permit program. The Act also requires states to establish a Small Business Assistance Program which aids small businesses in permit process, provides technical and compliance assistance, and provides information about pollution prevention methods. The two full-time and one part-time Clerk Typist IIIs will assist senior staff to: <ol style="list-style-type: none"> 1. develop procedures to track permit applications 2. prepare information packets for potential permittees 3. issue and receive standardized permit applications 4. prepare permit documentation and correspondence 5. provide assistance and information to permit applicants 6. operate small business and pollution prevention hotlines 7. develop correspondence tracking systems, and 8. develop and maintain permit and permit application files. 		

Request For New Position

AGENCY Environmental Conservation
DRU Environmental Quality
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Revised Date: _____

Position Title ACCOUNTING CLERK II		No. of Positions 1	Range / Step 09A	Barg. Unit GG
Time Status Full-time	Staff Months 3	Location Juneau		Election District Juneau
TYPE OF EXPENDITURE		Amount		
Salary		6.3		
Benefits		2.4		
Premium Pay				
Other				
Total Personal Services		8.7		
Travel		0		
Contractual		2		
Commodities		1		
Equipment		5		
Other				
Total Cost		16.7		
FUNDING SOURCE FOR TOTAL COST				
Federal Receipts	1002			
G.F. Match	1003			
General Fund	1004			
I-A Receipts	1007			
CIP Receipts	1061			
Other	PROGRAM RECEIPTS	16.7		

Justification

The new Clean Air Act of 1990 requires all states to establish a completely new operating permit program which takes into account small sources never permitted before, includes greater public participation in the permit process, and requires the collection of fees to completely offset all costs for the review, issuance, and maintenance of the permit program.

The Accounting Clerk II will assist senior staff by:

1. developing procedures for permit fees and assessments
2. preparing information packets for potential permittees
3. developing uniform accounting procedures for permit fees
4. preparing permit documentation and correspondence
5. providing assistance and information to permit applicants
6. tracking small business and pollution prevention funds
7. implementing report and audit procedures, and
8. developing standardized managerial summaries of fund activity.

**Request For
New Position**

AGENCY Environmental Conservation

DRU Environmental Quality

COMPONENT Air Quality Management

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Revised Date: _____

Position Title PARALEGAL ASSISTANT II		No. of Positions 1	Range / Step 16A	Barg. Unit GG
Time Status Full-time	Staff Months 9	Location Juneau		Election District Juneau
TYPE OF EXPENDITURE		Amount	Justification	
Salary		27.7	<p>The new Clean Air Act of 1990 requires all states to establish a completely new operating permit program which takes into account small sources never permitted before, includes greater public participation in the permit process, and requires the collection of fees to completely offset all costs for the review, issuance, and maintenance of the permit program. The Act also requires states to establish a Small Business Assistance Program which aids small businesses in permit process, provides technical and compliance assistance, and provides information about pollution prevention methods.</p> <p>The Paralegal Assistant II will assist in:</p> <ol style="list-style-type: none"> 1. drafting enabling authority 2. developing comprehensive and understandable regulations 3. drafting procedures for public participation in the permit process 4. preparing draft regulations for pollution prevention 5. providing assistance to program staff on regulatory procedures 6. developing the new State Air Quality Plan 7. preparing program authority certifications to USEPA 8. developing enhanced administrative review procedures, and 9. coordinating with established judicial review procedures. 	
Benefits		10.8		
Premium Pay				
Other				
Total Personal Services		38.5		
Travel		0		
Contractual		2		
Commodities		1		
Equipment		5		
Other				
Total Cost		46.5		
FUNDING SOURCE FOR TOTAL COST				
Federal Receipts	1002			
G.E. Match	1003			
General Fund	1004			
I.A. Receipts	1007			
CIP Receipts	1061			
Other	PROGRAM RECEIPTS	46.5		

**Request For
New Position**

AGENCY Environmental Conservation
 BRU Environmental Quality
 COMPONENT Air Quality Management

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 Revised Date: _____

Position Title ADMINISTRATIVE ASSISTANT II		No. of Positions 1	Range / Step 14A	Barg. Unit GG
Time Status Full-Time	Staff Months 9	Location Juneau		Election District Juneau
TYPE OF EXPENDITURE		Amount		
Salary		24.1		
Benefits		9.9		
Premium Pay				
Other				
Total Personal Services		34.0		
Travel		0		
Contractual		2		
Commodities		1		
Equipment		5		
Other				
Total Cost		42.0		
FUNDING SOURCE FOR TOTAL COST				
Federal Receipts	1002			
G.F. Match	1003			
General Fund	1004			
IA Receipts	1007			
CIP Receipts	1061			
Other	PROGRAM RECEIPTS	42.0		
Justification <p>The new Clean Air Act of 1990 requires all states to establish a completely new operating permit program which takes into account small sources never permitted before, includes greater public participation in the permit process, and requires the collection of fees to completely offset all costs for the review, issuance, and maintenance of the permit program. The Act also requires states to establish a Small Business Assistance Program which aids small businesses in permit process, provides technical and compliance assistance, and provides information about pollution prevention methods.</p> <p>The Administrative Assistant II will:</p> <ol style="list-style-type: none"> 1. supervise procedures to track permit applications and fees 2. implement reporting and auditing procedures 3. issue standardized permit applications 4. supervise and audit permit documentation procedures 5. provide assistance and information to permit applicants 6. assure uniform accounting procedures for permit fees 7. coordinate program support functions, and 8. provide standardized managerial summaries of program activity. 				

**Request For
New Position**

AGENCY Environmental Conservation

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Page 8 of 9

Revised Date: _____

AMENDMENTS
OFFERED BY ATTORNEY GENERAL'S OFFICE
AS READ INTO RECORD
AT HEARING OF FEBRUARY 18, 1992

CS FOR HOUSE BILL NO. 377
7-LS1624\G Lauterbach 2/12/92
AS ADOPTED IN HOUSE RESOURCES COMMITTEE
ON FEBRUARY 19, 1992

FIRST PROPOSED AMENDMENT

Sec. 46.14.200 Page 3, lines 6-7

Take what is now subsection 46.14.215(c) (Page 5, lines 10 - 12), make it 46.14.200(d), and reword the subsection as follows:

(d)[(c)] The department shall ensure that permits issued, modified, amended, or renewed under this chapter comply with the emission limitations and other requirements of the Clean Air Act, applicable federal regulations and the state air quality control plan.

Reletter what was 46.14.200(d) (Page 3, line 7) as 46.14.200(e).

SECOND PROPOSED AMENDMENT

Sec. 46.14.205 Page 3, lines 10.

Delete "AND SOURCES" from the title of this section.

THIRD PROPOSED AMENDMENT

Sec. 46.14.205(a)(4) Page 3, lines 20 - 23.

Reword as follows:

(4) an existing facility, otherwise described in (1), (2), [OR] (3) , or (5) of this subsection for which a modification is proposed that would increase actual emissions of an [REGULATED] air contaminant to an amount equal to or greater than the annual emission quantity set out in regulations adopted under AS 46.14.010.

FOURTH PROPOSED AMENDMENT

Sec. 46.14.830 Page 17, lines 22 - 23

Add the word "regulation" as shown:

(b) An administrative penalty assessed under this section may not exceed \$10,000 a day for each offense. Each provision, regulation, term, or condition violated is a separate and distinct offense. If a violation of a provision, regulation, term or condition continues from day to day, each day is a separate offense.

FIFTH PROPOSED AMENDMENT

Sec. 46.14.830(h) Page 18, line 26.

Insert the words as shown:

(h) If a person fails or refuses to pay an administrative penalty assessed under this section after the penalty has become a final agency action, the department may request the attorney general to commence a judicial action or take other appropriate steps to bring an action to collect the penalty. *

SIXTH PROPOSED AMENDMENT

Sec. 46.14.340(b) Page 19, line 12.

Substitute the words "this chapter" for "AS 46.14.205" as shown:

(b)...the small business assistance program that are directed at facilities subject to [AS 46.14.205] this chapter.

same clause

PRODUCERS' COUNCIL **DRAFT**

USE OF FEDERAL STANDARDS

David Rogers; Mary Nordale

Replace 46.14.010(a) with the following text:

Sec. 46.14.010. EMISSION CONTROL REGULATIONS. (a) After public hearing, the department may adopt regulations under this chapter setting such air pollution emission standards, performance standards and limitations as are essential to meet the minimum requirements of state air quality control programs mandated by the Clean Air Act as amended, 42 U.S.C. 7401-7671q, and federal regulations promulgated thereunder. Where a federal standard or limitation is in effect for a given air contaminant, the department shall not adopt a standard or limitation that is more stringent than the federal standard or limitation. Where there is no federal standard or limitation in effect, the department shall not adopt a standard or limitation except in those instances where such adoption is federally required, and in those instances the department shall apply the same criteria in determining the standard or limitation as the federal administrator is required by the Clean Air Act to apply; provided, however, that state regulations in effect on April 1, 1992 regulating air contaminants not federally regulated may remain in effect until a federal regulation for the same air contaminant becomes effective. The department shall provide exemptions for fugitive emissions to the extent allowed under federal laws and regulations.

* * * * *

COMMENT: This proposed amendment is still under review

and is subject to change. Under the Clean Air Act Amendments of 1990, EPA will regulate far more kinds of sources, and far more kinds of chemical air pollutants than ever before, and will require state operating permit programs to reflect this far-reaching and pervasive federal regulatory activity. As one example, EPA has already identified 189 chemicals (and will add more) which will be federally regulated as hazardous air pollutants; this contrasts vividly with the fact that before the CAA 1990, EPA had regulated only five hazardous air pollutants. With the expanded federal program there will be no need for Alaska to adopt more stringent standards than those adopted by EPA, or to regulate emission sources more extensively than EPA will be regulating them as it implements the new federal statute. The state, with its limited scientific capabilities within ADEC compared to those available to EPA, should not attempt to make independent evaluations of health-related studies, but instead should rely on federal determinations.

If Alaska industries are forced to meet the higher costs resulting from more stringent regulations, they will be placed at serious economic disadvantage when competing for markets, both foreign and domestic, which will compound the disadvantage faced by Alaska industries now because of higher costs of production. Therefore, HB 377 should limit the authority of ADEC to adopt regulations that exceed federal requirements. Similarly, HB 377 should require the department to provide exemptions for fugitive emissions to the extent allowed by federal law.

The next to last sentence allows the department to

regulate kinds of sources and air contaminants which the Clean Air Act requires states to regulate if EPA has not done so by a prescribed deadline; i.e., the requirement for states to set "equivalent emission limitations" in permits under 42 U.S.C. 7412(j).