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FEDERAL EXEMPTIONS

Delete Section 200 and insert in lieu thereof, the following:

Sec. 46.14.200. PERMITS FOR CONSTRUCTION, MODIFICATION, OR OPERATION. (a) Every person intending to construct, install, modify, reconstruct, or establish a facility subject to AS 46.14.205(a) must comply with the terms and provisions of the construction permit issued under this chapter.

(b) Every person operating a facility described in AS 46.14.205(a) or a facility that contains one or more of the sources listed in AS 46.14.205(b) must comply with the terms and provisions of the operating permit issued under this chapter.

(c) Permits issued, modified, amended, or renewed under this chapter must comply with the emission limitations and other requirements of 42 U.S.C. 7401-7671q (Clean Air Act), applicable federal regulations, and the state air quality control plan.

(d) The department shall promptly exempt a source or sources from the requirements of this chapter whenever the federal administrator exempts a source or sources from the requirements of 42 U.S.C. 7661a(a) (Clean Air Act, Sec. 502(a)).

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COMMENT: This revision of Sec. 200 is primarily a grammatical change, placing the requirements of the section in the affirmative rather than the negative.

The phrase "and an order or other determination of the department under this chapter." is deleted from subsections (a) and (b) to eliminate the possibility of confusion. As rewritten, a permittee under either (a) or (b) is required to comply with the permit. The permit should contain all of the terms and provisions required by this chapter and additional orders and determinations should not be necessary to allow construction or operation.

The work draft version did not contain a subsection (c). Subsection (c) of the revision appears as subsection (d) in the work draft.

Subsection (d) has been added to require the department to exempt sources exempted under federal law. The current bill text only authorizes (but does not require) ADEC to adopt federal exemptions of particular sources EPA decides to exempt under 42 USC 7661a(a), which allows EPA to exempt sources or source categories (but not "major" sources) from operating permit requirements. In keeping with the spirit of amendment #1 (which prevents the state from adopting standards and limitations that are more stringent than corresponding federal requirements), the bill should also require ADEC to promptly exempt particular sources or source categories to the extent that EPA adopts such exemptions. The term "promptly" has been added to prevent unreasonable delays.

Amend subsection (b) of 46.14.205 to read as follows:

(b) The owner and operator of a facility shall obtain an operating permit from the department if the facility is [A MAJOR FACILITY,] a facility subject to (a) of this section, or a facility that contains one or more of the following sources:

(1) a source subject to federal new source performance standards under 42 U.S.C. 7411 (Clean Air Act, sec. 111) or national emission standards for hazardous air pollutants issued under 42 U.S.C. 7412 (Clean Air Act, sec. 112); or

(2) another stationary source designated by the federal administrator [OR THE DEPARTMENT, BY REGULATION.]

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COMMENT: The definition of "major facility" contained in Sec. 990 includes all of the types of facilities listed in subsection (a). Inclusion of "major facility" in subsection (b) is unnecessarily confusing as there is no other use of the phrase in this section that explains it. The change in (2) simply restricts the department to federal stationary source designations.

Amend the first sentence of 46.14.210(a) to read as follows:

EMISSION CONTROL PERMIT PROGRAM REGULATIONS. (a) The department shall adopt regulations to address all substantive [THE FOLLOWING] elements of the emission permit program including:

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COMMENT: This change will assure that all important aspects of the new program will be defined in regulation and subject to public review and comment.

Amend 46.14.210(a)(6) as follows:

(6) procedures for renewing, modifying, amending, or revising a permit that provide maximum flexibility in the operation consistent with [THE PURPOSES OF THIS CHAPTER AND] 42 U.S.C 7401-7671q (C.ean Air Act), <u>including procedures to allow changes within a permitted facility without requiring a permit revision as provided in 42 USC 7661a(10)</u>; and

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COMMENT: The federal statute requires state programs to include:

"Provisions to allow changes within a permitted facility (or one operating pursuant to section 7661b(d) of this title) without requiring a permit revision, if the changes are not modifications under any provision of subchapter I of this chapter and the changes do not exceed the emissions allowable under the permit (whether expressed therein as a rate of emissions or in terms of total emissions: Provided, That the facility provides the Administrator and the permitting authority with written notification in advance of the proposed changes which shall be a minimum of 7 days, unless the permitting authority provides in its regulations a different ~~timeframe for emergencies."~~

The current draft bill does not specifically refer to this federal provision, which requires state programs to allow certain "changes" within a permitted facility to proceed without a permit revision following notice by the applicant to the permitting authority (ADEC).

Because the EPA regulations regarding permit revisions are still under discussion, it is impossible to provide for these situations with any specificity. However, this general amendment will at least assure coverage in the ADEC regulations to the maximum extent permitted by the final EPA rules. In addition, deletion of the reference to "consistency with the purposes of this chapter" will assure that these procedures are no more restrictive than applicable federal requirements.

INITIAL APPLICATION DEADLINE.

Amend 46.14.220 to read as follows:

Section 46.14.220. TIME FOR SUBMISSION OF PERMIT APPLICATIONS. The owner and operator of a facility required to have an operating permit under this chapter shall submit the required application and monitoring, reporting, and quality assurance plan no later than 12 months after the date on which the facility becomes subject to AS 46.14.200, [OR AT AN EARLIER TIME IF REQUIRED BY THE DEPARTMENT.] or 12 months after the date on which EPA approves the state permit program under 42 U.S.C. 502(d), whichever is later. The department may accept and begin processing applications filed earlier than the deadline, and such early applications may be given priority for permit issuance.

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COMMENT: The current text allows ADEC to set application and information deadlines that are shorter than those required under the federal Clean Air Act. The federal program implementing the 1990 amendments of the Clean Air Act will regulate a wide range of facilities which never before have needed air quality related permits. For many of the smaller businesses, such as rural electrical utilities, this may be their first encounter with environmental regulations and permit requirements. The regulated community will need a reasonable time to understand what they must do, and to prepare their permit applications.

The bill should establish a statutory deadline of 12 months from the date the facility is subject to 46.14.200, or 12 months after the date on which EPA approves the state permit program, whichever is later, and also allow earlier filing of applications.

APPLICABLE REVIEW AND APPROVAL DEADLINES[1]/

Amend proposed 46.14.225 to read as follows:

Sec. 46.14.225. ADMINISTRATIVE ACTIONS REGARDING PERMITS. (a) Except as provided in AS 46.14.245, after receipt of a complete application, and after notice and opportunity for public comment and hearing, the department shall issue or deny

(1) a construction permit within 30 days after the close of the public comment period;

(2) an operating permit, other than a general operating permit, within 6 [12] months after receipt of the complete application by the department.

The department shall give preferential priority to the issuance of permits for construction of new facilities and modification of existing facilities if the department is unable to process expeditiously all operating permits for existing facilities.

(b) Within 30 days after receipt of a written application for a permit, the department shall provide the applicant with a written determination of completeness. In the absence of a timely determination by the department, the application shall be deemed complete for purposes of the shield provided by AS 46.14.290; but the department may seek such additional information from the applicant as is reasonably needed to complete the processing of the application. If the department determines that the application is

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[1]/Also see proposed amendment to as 46.14.290

incomplete, the department shall, no later than 10 days following issuance of its determination, specify to the applicant the additional information needed. The department may elect to invoke the shield provision of AS 46.14.290 effective on the date the department received the application.

(c) [(b)] Notwithstanding (a) of this section, the department may establish a phased schedule for acting on operating permit applications submitted on or before November 15, 1994. A phased schedule must ensure that at least one -third of the applications submitted on or before November 14, 1994, will be acted on by the department during each of the three years after November 15, 1994. On or before November 15, 1997, the department shall act on all applications received on or before November 15, 1994.

(d) [(c)] Failure by the department to act within the time limits established in or under (a) or (b) of this section shall be treated as a final agency action [, BUT ONLY] for purposes of judicial review to require that action be taken by the department.

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COMMENT: The current text establishes an outside limit of 12 months for ADEC to act on applications for operating permits (AS 46.14.265(B)), and is silent on the question of deadlines for a completeness review of applications. Although existing facilities are protected by timely and complete applications under proposed permit shield provisions, new facilities cannot commence operations until the permit is obtained, and a similar problem exists for modifications of existing facilities. The 12 month period is too long, though it is an improvement over the 18 months in the original text. In addition, without a reasonable completeness review provision in the statute, there is no way to assure timely identification of problems, nor to assure the presence of the shield provision afforded by a "timely and complete" application as intended by the federal statute.

To provide some level of predictability for all operations and to eliminate unnecessary delays for new facilities and modifications of existing facilities, the bill should specify time limits for the application review and permit issuance processes. The deadlines should be no longer than 30 days for the determination of completeness and no longer than 6 months for permit issuance after receipt of a complete application.

Relative priority should be given to the processing of applications for permits to construct new facilities or modify existing facilities, as those actions cannot go forward without an issued permit, whereas existing facilities can continue to operate (under the shield of their submitted application) while their permits are being processed. In fact, EPA's latest draft regulation (draft dated January 27, 1992, at page 68) indicates that state programs should ensure a priority for applications for construction and modification permits.

PERMIT REVIEWS.

Amend 46.14.230 to read as follows:

Section 46.14.230. REVIEW OF PERMIT ACTION. If aggrieved by a permit action under this chapter the owner and operator, and any person who participated in this public comment process, [OR A PERSON WITH] who has standing under state [OR FEDERAL] law to obtain [ADMINISTRATIVE] judicial review of a permit action under this chapter may request an adjudicatory hearing under the department's adjudicatory hearing procedures. Administrative review is limited to those issues raised in the public comment process. After the issuance of an adjudicatory hearing decision, a party to the hearing may obtain judicial review of that decision as provided in Alaska Rules of Appellate Procedure.

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COMMENT: The existing language allows anyone to appeal a decision, including those who failed or refused to participate in the public comment process. It is unfair to allow people who did not participate to seize an opportunity to block a project by making the decision-making process unduly burdensome. If a person has a significant interest in a permit, he should be required to participate in the process in order to appeal a decision he doesn't like.

Both ADEC and the permittee should have an opportunity to consider and act in response to public comments made during the public process afforded for review of the draft permit. Persons who may later challenge the issued permit should be limited to those who came forward during the public comment period and expressed their concerns. Similarly, later review of the issued permit should be limited to those issues that were raised in the public comment period.

GENERAL PERMITS

Amend 46.14.240 to read as follows:

Sec. 46.14.240. GENERAL OPERATING PERMITS. After notice and opportunity for public comment and hearing, the department may, unless the permit is disapproved by the federal administrator, establish a general operating permit that would be applicable to more than one facility determined by the department to be similar in source structure. A general operating permit must contain provisions that meet the requirements of this chapter applicable to operating permits. A general operating permit becomes effective on the thirty-first calendar day following the applicant's submittal of an application to the agency, provided such application provides substantially complete information on such forms as the agency shall provide pursuant to the general permit; and provided the department has not notified the applicant by the end of the thirtieth calendar day (a) that the general permit is not applicable to that facility, or (b) that the application is not complete. [IS NOT EFFECTIVE FOR A SPECIFIC FACILITY UNTIL THE OWNER AND OPERATOR OF THE FACILITY HAS SUBMITTED AN APPLICATION UNDER AS 46.14.220 AND THE DEPARTMENT HAS ISSUED THE GENERAL OPERATING PERMIT. THE DEPARTMENT SHALL ISSUE OR DENY A GENERAL OPERATING PERMIT WITHIN 30 DAYS AFTER RECEIPT OF A COMPLETE APPLICATION.]

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COMMENT: The bill requires ADEC to approve each application submitted for an individual facility to come under a general operating permit. ADEC approval of an application filed under a general permit should not be required where the application is substantially complete, but instead should make the applicability of the general permit to the applicant automatic unless ADEC within 30 days issues a determination that the application is not complete or that the source is of a kind that does not qualify under the general permit. Such a procedure is allowable under EPA's proposed permit program regulations. Their latest draft (dated January 27, 1992), in its discussion of general operating permits at page 89 of the preamble, states:

> "The permitting authority may also determine in the first instance whether it will issue a response for each individual general permit application, and may specify in the general permit a reasonable time period after which a source which has submitted an application will be deemed to be authorized to operate under the general permit."

The procedure provided in this amendment would cut down on ADEC's paperwork burden, and is consistent with procedures used in other regulatory programs that utilize general permits.

Amend subsection (a) of 46.14.245 to read as follows:

Sec. 46.14.245. OBJECTION BY FEDERAL ADMINISTRATOR. (a) An operating permit may not be issued under this chapter until the federal administrator approves the permit, or until 45 days after a copy of the final draft permit has been provided by the department to the federal administrator, whichever is earlier. If, during the 45-day period, the federal administrator files an objection with the department, the department shall notify the applicant of the objection. The permit may not be issued until the objection is resolved or the permit is revised to meet the objection of the federal administrator. The department shall assist the permit applicant in resolving promptly any objection by the federal administrator.

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COMMENT: ADEC's assistance in resolving objections by the federal administrator is essential, as ADEC is the permitting authority and, presumably, drafted the permit in good faith. Both the permit applicant and ADEC must rely on ADEC's regulations, so an objection by a federal administrator must affect either the language of ADEC's regulation or ADEC's interpretation of the regulation. While the obligation to assist may be implicit, without specific statutory language to require assistance, ADEC could state that it has no such authority. It would be unfair to force a permit applicant to defend his application and ADEC at the same time.

In Sec. 46.14.245, add new subsection (c):

(c) During pendency of a petition filed under (b) of this section and until any objection made by the federal administrator has been resolved, the owner and operator of a facility that is operating under a permit issued under (a) of this section shall be entitled to the shield provided in Sec. 285.

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COMMENT: A period of uncertainty as to the finality of the provisions of an initial permit will exist from the date the permit is issued under (a) through the date on which the federal administrator determines whether or not to file an objection. A petitioner for an objection may deem it appropriate to seek an injunction to bar a facility from operating until the federal administrator has had time to file an objection and the objection has been resolved. State courts may be persuaded that an injunction is appropriate because the permit is an initial permit and, therefore, the owner and operator should not have an expectation of being able to commence operations until after the federal administrator has considered the petition. The concern is that a court would distinguish the period during pendency of an objection and the 90 days for state response from the periods when no petition for an objection is being acted upon, thereby leaving the facility without the protection of the Sec. 285 shield.

Amend Sec. 46.14.250 to read as follows:

Sec. 46.14.250. PAYMENT OF FEES AND FEE SCHEDULE. (a) The owner and operator of a facility who is required to apply for a permit under AS 46.14.205 shall pay the applicable fees established [SET OUT IN THE FEE SCHEDULE ADOPTED BY THE DEPARTMENT] under (b) of this section. The owner and operator shall pay the fees to the department or to the public entity designated by the department.

(b) The department shall adopt, by regulation, [A] fee schedules for minimum direct costs and for indirect costs. Fees must be sufficient to cover, but not exceed, the reasonable direct and indirect costs required to develop and implement the permit program and the federally mandated aspects of the small business assistance program established in this chapter. Fees for direct costs shall be based upon the types of facilities; the quantities, types or toxicity of air contaminants emitted; the emission source classifications; and other factors reflecting the cost of administering the emission control permit program under this chapter. [FEES MUST BE SUFFICIENT TO COVER, BUT NOT EXCEED, THE REASONABLE DIRECT AND INDIRECT COSTS REQUIRED TO DEVELOP AND IMPLEMENT THE PERMIT PROGRAM AND THE FEDERALLY MANDATED ASPECTS OF THE SMALL BUSINESS ASSISTANCE PROGRAM ESTABLISHED IN THIS CHAPTER.] Fees to cover direct costs may, after consultation with the owner and operator, exceed the fees established in the schedule if the department determines that the appropriate levels of monitoring and enforcement reasonably required to implement the permit are greater than the minimum. For purposes of this subsection, "costs" include expenditures for

(1) preparing and adopting regulations to implement the permit program;

(2) preparing guidance on the permit program;

(3) reviewing and acting upon a permit application;

(4) implementing and enforcing the terms and conditions of a permit, excluding court costs or other costs associated with an enforcement action;

(5) monitoring of emissions and ambient air quality;

(6) reviewing and executing models, analyses, and demonstrations to evaluate emissions;

(7) preparing inventories and tracking of facility emissions;

(8) performing data management, analysis, and report writing;

(9) conducting training, audits, or other services as provided under the small business assistance program under AS 46.14.400 - 46.14.430; and

(10) reviewing and acting upon plans and other information submitted under AS 46.14.200 - 46.14.290.

(c) The department shall review the fee schedules [STRUCTURE] adopted under (b) of this section at least every five years and when there are changes in state or federal laws that affect the costs of operating the permit program or the federally mandated aspects of the small business assistance program. Upon review, the department shall adopt changes to [AMEND] the fee schedules [STRUCTURE] as necessary to ensure that the fees cover, but do not [SIGNIFICANTLY] exceed, the reasonable costs authorized by (b) of this section.

(d) If fees are determined on a tonnage basis, fees from all sources shall not exceed, in the aggregate, $25 per ton of each regulated pollutant. In determining this amount, the department shall not include any amount of regulated pollutant emitted by any source in excess of 4,000 tons per year of that regulated pollutant.

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COMMENT: This proposal rewrites Sec. 250 to make clearer and more precise the direction to the department with respect to fee schedules; requires direct and indirect costs to be determined separately and in subsection (c) substitutes the word "schedules" for "structure" and deletes "significantly" to conform to the language of subsection (b) where "significantly" has already been deleted.

This proposal also requires the department to establish minimum fees for direct costs to give owners and operators some certainty as to minimum costs associated with a particular facility. This will permit owners and operators to plan their businesses more effectively. The proposal also permits the department to establish fees greater than the minimum if the complexity or scope of a facility requires greater effort by department personnel. It permits the department to cooperate with a facility to achieve the greatest degree of economy in implementation of the permit without diminishing the ability of the department to achieve appropriate levels of air quality control.

A new subsection (d) is added. Federal law requires a state program to assess a fee which is not less than $25 per ton in the aggregate from all sources or such other amount as the administrator may determine adequately reflects the reasonable costs of the permit program, with certain exceptions. In calculating whether a program has met the per tonnage minimum, CAA 1990 further provides that the permitting authority is not required to include any amount of regulated pollutant emitted by any source which is in excess of 4,000 tons per year of that regulated pollutant. This amendment simply provides that if fees are set on a per tonnage basis, the aggregate cannot exceed $25 per ton and that this calculation will not be based on emissions over 4,000 tons from any source.

The EPA draft regulations require that fees be adjusted annually "by the percentage, if any, by which the Consumer Price Index for the most recent calendar year ending before the beginning of such year exceeds the Consumer Price Index for the calendar year 1989." The consumer price index to be used is the index published by the U. S. Department of Labor for all-urban consumers. If the department elects to use a per-ton calculation, the department will be able to recover escalating costs for services.

Amend 48.14.255 to read as follows:

Sec. 46.14.255. PENALTY AND INTEREST FOR NONPAYMENT. (a) [THE DEPARTMENT SHALL ADOPT REGULATIONS THAT PROVIDE FOR THE ASSESSMENT OF A PENALTY OF FIVE PERCENT PER MONTH OF DELINQUENCY UP TO A MAXIMUM OF 25 PERCENT OF THE FEE ESTABLISHED UNDER AS 46.14.250(b) AGAINST THE OWNER AND OPERATOR OF A FACILITY IF THE OWNER AND OPERATOR FAIL TO TIMELY PAY A FEE LAWFULLY IMPOSED UNDER THIS CHAPTER.] The department may [ALSO] assess interest against the owner and operator, computed under AS 45.45.010(a), after a fee is due under this chapter and is unpaid.

(b) The department may refuse to issue, amend, modify or renew a permit if the permittee has failed to pay a fee imposed under AS 46.14.250 or a penalty or interest imposed under (a) of this section.

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COMMENT: It is important to note that late payment penalties are not federally required in state programs, although this remedy is available to EPA when EPA is implementing the air program within a state, 42 USC 7661a(b)(3)(C)(ii). Moreover, while the revised late payment penalty provision contained in the 3/17 CS (5% per month up to 25%) certainly is an improvement over the initial proposal (up to 50%), it still is unnecessarily burdensome. Other requirements in the bill, including interest on late payments and departmental discretion to refuse to issue, amend or renew a permit if the permittee has failed to pay a fee, provide adequate incentives and penalties. In any event, the best means to enccurage timely payment of fees is swift and certain judicial enforcement action in appropriate cases.

DURATIONAL TERMS.

Amend 46.14.260(a) to read as follows:

Section 46.14.260. DURATION OF OPERATING PERMITS. (a) An operating permit under this chapter shall be issued for a fixed term of five years [ESTABLISHED BY THE DEPARTMENT THAT IS NO LONGER THAN FIVE YEARS BUT NO SHORTER THAN THREE YEARS] after the date of issue, except for a permit issued under AS 46.14.280 or unless a shorter term is requested by the permit applicant.

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COMMENT: Limiting ADEC discretion by establishing a five year permit duration unless a shorter term is requested by the applicant may avoid having a permit constantly in the renewal process.

According to EPA, every permitted facility will have a compliance plan; and those existing facilities not immediately able to meet the emission limitations in the permit will have a compliance schedule. Hence, there is no need for shorter duration permits in noncompliance situations (a concern expressed by ADEC).

ADEC also has called attention to the potential for the holder of a permit for construction of a new facility (or modification of an existing facility) to "occupy" a PSD increment without proceeding with construction in a timely manner, which would preclude some other facility from obtaining a construction permit. This can be prevented by inserting in construction permits a reasonable deadline by which construction must commence or else the permit will expire, as is often done with building permits issued by local governments. There is no need to use operating permit duration to accomplish this control, and hence no need for permits with durations shorter than 5 years (other than those for temporary locations, in section 46.14.280).

PERMIT REOPENING

Amend 46.14.265 to read as follows:

Sec. 46.14.265. REOPENING OF PERMITS. (a) A permit issued under this chapter is subject to review and reopening by the department, subject to (b) of this section, based on the determination of the federal administrator that the permit must be revised to comply with 42 U.S.C. 7401 - 7671q (Clean Air Act).

(b) A permit issued under this chapter is subject to review and reopening by the department only if the permit is issued to a major facility and the remaining duration of the permit is [IS VALID FOR A TERM OF] three or more years. The department shall reopen a permit described in this subsection solely to incorporate changes in laws, or to impose equivalent emission limitations, that became applicable after the permit was issued. A permit shall not be subject to reopening sooner than 18 months following its issuance, renewal, modification, amendment, or revocation and reissuance. Notwithstanding the provisions of this subsection, if the owner and operator of a permitted facility requests that the permit be reopened either to authorize a change in operation or to incorporate a decreased emission standard resulting from a change in law, the department shall reopen the permit in accordance with the request. The department shall make incorporation allowed under this subsection as soon as practicable, but, regarding a change in law, no later than 18 months after the change in law took effect. The department may not reopen a permit under this subsection if the change in law is not effective until after the date that the permit expires. Reopening of a permit under this subsection shall be treated as a permit renewal by the department if the procedural requirements for permit renewal have been met. [(C)] Proceedings to reopen a permit shall [FOLLOW THE SAME PROCEDURE AS FOR INITIAL PERMIT ISSUANCE AND] affect only those parts of the permit for which the department had cause to reopen under this section.

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COMMENT: This section allows the state to reopen permits based on a determination by the EPA that the permit must be revised to comply with the Clean Air Act. The bill does not provide for any particular grace period before reopening procedures may be initiated (other than the 18-month maximum period under CAA), which would help minimize the problem of some sources being constantly under permit review. Finally, it appears to allow for reopening permits to insert a newly promulgated emission standard into permits with less than three years <u>remaining</u> in the term of the existing permit, contrary to our reading of federal law.

Except for situations where the new standard is less stringent than the permit standard, or where the permittee seeks a change in operations, the bill should limit reopening procedures to permits with 3 or more years remaining; and should establish an 18-month grace period prior to initiation of reopening procedures. EPA's proposed regulations (draft dated January 27, 1992, at page

88) appear to require reopening and revising a permit for a major source to insert a newly issued legal requirement only for permits "with a remaining permit term of 3 or more years."

Under this proposed amendment, a permit with a total duration of 5 years, but only 2 years remaining would not have to be reopened (the new standard would be inserted at the time of permit renewal); but a permit with a total duration of 5 years, and with 3.5 years remaining as of the effective date of the newly issued federal standard, would have to be reopened to insert the new standard. Contrast this with the result under the bill's present language: Every permit with a total duration of 3 or more years (which means every permit, except "temporary locations" permits) would be subject to reopening if the effective date of the new federal standard falls prior to the permit's scheduled renewal date.

Amend 46.14.270 to read as follows:

Sec. 46.14.270. TERMINATION, MODIFICATION, AMENDMENT, OR REVOCATION AND REISSUANCE OF PERMITS. After 30 days' written notice to the permittee, the department may

(1) terminate, modify, amend, or revoke and reissue a construction or operating permit if the department finds that

(A) 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;

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

(C) there has been material change in the quantity or type of air contaminant emitted from the facility.

(2) modify, amend, or revoke and reissue a construction or operating permit if the department finds that the permit contains a material mistake.

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COMMENT: The latest CS is a substantial improvement over prior versions and has incorporated two out of three of our requests (no termination for failure to pay fees -- now a ground for refusal to renew, modify or amend -- or for material mistake). However, termination for permit violations should be further limited to violations of "material" terms and conditions.

TIMELY AND COMPLETE PERMIT APPLICATIONS[1]/

Amend 46.14.290 to read as follows:

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, as applicable, but final action has not been taken on the application, the owner's and operator's failure to have an operating permit is not a violation of this chapter. [UNLESS THE DELAY IN FINAL ACTION WAS DUE TO THE FAILURE OF THE OWNER AND OPERATOR TO TIMELY SUBMIT INFORMATION REQUIRED OR REQUESTED TO PROCESS THE APPLICATION.] An owner and operator required to have an operating permit under this chapter are not in violation of the operating permit program established under this chapter before the date on which the owner and operator are required to submit an application under AS 46.14.220. An application shall be deemed complete for purposes of invoking the shield provided by this section if the applicant submits the application on forms provided by the department and the applicant substantially complies with the informatio[illegible]ents of the form.

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COMMENT: Federal law and the current bill say that applications must be "timely and complete" before the permit shield can be considered effective pending issuance of a new and/or modified/amended permit; and "complete" is federally defined in a

[1]/ Also see proposed amendment to 46.14.225.

way that does not require absolute perfection in an application before it is to be considered "complete" for shield purposes. The issue is that there may be minor problems with an application that should not prevent the application from being considered timely and complete. EPA's proposed permit program regulations require state programs to contain a provision that any permit application is to be deemed "complete" (thus bringing the "shield" provision into effect) if within some specified number of days (not more than 60) the state agency has not issued a determination to the contrary. The agency can still ask for supplemental information from the permittee. There is nothing in the federal statute or regulations that precludes a state from adopting a shorter period, such as 30 days. No such mechanism is reflected in the bill.

This amendment defines a "complete" application as one in which the applicant has provided substantially all the information called for on a standard application form which the federal statute requires ADEC to develop. The proposed amendment to 46.14.225 provides the 30-day period within which, if ADEC does not act, an application will be deemed complete for shield purposes.

EQUIPMENT MALFUNCTIONS.

Add a new section 46.14.295, to read as follows:

Excess emissions caused because of a startup, shutdown, malfunction or routine scheduled maintenance of a source (including pollution control equipment or process equipment) shall not be considered a violation of a permit or the emission limitation or counted as an increase in emissions.

Add the following definitions to section 990 and renumber definitions accordingly.

- "Excess emission" means the emission of air contaminants in excess of applicable emission limitations or standards in a permit or in any applicable regulation in 18 AAC 50.

- "Malfunction" means any sudden and unavoidable failure of a source, including air pollution control equipment and process equipment. Failures caused by poor maintenance or careless operation shall not be considered a "malfunction."

- "Shutdown" means the cessation of operation of any source, including pollution control equipment, process equipment or process for any purpose.

- "Startup" means the setting into operation of any source, including pollution control equipment, process equipment or process.

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COMMENT: Federal courts have long recognized that EPA regulations must provide exemptions for periods of startup or upset when the air pollution control equipment may not function normally. See generally Portland Cement Association v. Ruckelshaus, 486 V.2d 375 (D.C. Cir. 1973); Essex Chemical Corporation v. Ruckelshaus, 486 F.2d 427 (D.C. Cir. 1973). After these two cases were decided, EPA finalized the new source performance standard regulation 40 C.F.R. § 60.8(c), which states in pertinent part:

> "Operations during periods of startup, shutdown, and malfunction shall not constitute representative conditions for the purpose of performance test nor shall emissions in excess of the level of the applicable emission limit during periods of startup, shutdown, and malfunction be considered a violation of the applicable emission limit unless otherwise specified in the applicable standard."

Similar provisions are found under the NPDES provisions of the Clean Water Act. See 40 C.F.R. § 122.41(n).

At the end of Sec. 46.14.410, add new subsection (c):

(c) Audits performed by the department or any person shall not be deemed waivers by owners and operators of facilities of any constitutional or statutory rights. The information obtained by the department through audits shall not be used for enforcement or for termination, modification, revocation, reissuance or reopening of permits and shall not be required to be disclosed in any administrative or judicial proceeding.

* * * * *

COMMENT: Courts have held that a person who voluntarily gives a governmental agency information even under an agreement that the information will not be used against him has waived any constitutional or statutory rights against self-incrimination. Without the prohibition, the department would be free to use any information uncovered in the course of an audit against the owner and operator of a facility. The EPA has long recognized that businesses should be encouraged to perform audits to assist in diminishing pollution and has imposed upon itself a prohibition against use of audit information or the requirement that audit information be disclosed.

The prohibition is necessary in order to protect owners and operators from incriminating disclosures of information discovered in the course of audits and to protect owners and operators of facilities from disclosure in the course of pretrial discovery procedures under either administrative or judicial rules.

Amend 46.14.500(f) as follows:

(f) A municipality or a local air quality district administering a program under this section shall administer its local air quality control program according to this chapter, regulations adopted under this chapter, and its cooperative agreement under (d) of this section. [EXCEPT THAT] A municipality's or local air quality district's program may not be more stringent than the program administered by the department [IF THE MUNICIPALITY OR DISTRICT HAS ADDITIONAL LEGAL AUTHORITY AUTHORIZING ADDITIONAL REQUIREMENTS].

* * * * *

COMMENT: For the reasons outlined in the comment to amendment #1, local air quality programs also should be prevented from exceeding federal standards and limitations.

ADMINISTRATIVE PENALTIES

Delete 46.14.830 as follows:

[Sec. 46.14.830. ADMINISTRATIVE PENALTIES FOR AIR POLLUTION. (A) THE DEPARTMENT MAY ASSESS AN ADMINISTRATIVE PENALTY AGAINST A PERSON WHO VIOLATES, OR CAUSES, OR ALLOWS TO BE VIOLATED A PROVISION OF THIS CHAPTER, A REGULATION ADOPTED UNDER THIS CHAPTER, OR A TERM OR CONDITION OF AN ORDER, PERMIT, OR APPROVAL OF THE DEPARTMENT UNDER THIS CHAPTER.

(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; IN DETERMINING THE AMOUNT OF A PENALTY ASSESSED UNDER THIS SECTION, THE DEPARTMENT SHALL CONSIDER THE EFFECT OF THE OFFENSE ON THE PUBLIC HEALTH OR THE ENVIRONMENT, PRIOR HISTORY OF COMPLIANCE OR NONCOMPLIANCE WITH THIS CHAPTER, THE NEED TO DETER FUTURE OFFENSES, THE ECONOMIC BENEFIT OF NONCOMPLIANCE REALIZED BY THE OFFENDER, AND OTHER FACTORS THAT THE DEPARTMENT CONSIDERS RELEVANT. THE DEPARTMENT SHALL, BY REGULATION, PREPARE, PUBLISH, AND MAKE AVAILABLE TO INTERESTED PERSONS, A PENALTY POLICY DESCRIBING THE FACTORS TO BE CONSIDERED IN SETTING PENALTIES, THE METHODS FOR WEIGHING THE FACTORS, AND OTHER ASPECTS OF PENALTY

COMPUTATION.

(C) IF A PENALTY IS ASSESSED UNDER THIS SECTION, THE DEPARTMENT SHALL PROVIDE THE ASSESSMENT NOTICE TO THE PERSON AFFECTED, BY PERSONAL SERVICE OR BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED. AN ADMINISTRATIVE PENALTY ASSESSED UNDER THIS SECTION BECOMES A FINAL AGENCY ACTION 30 DAYS AFTER SERVICE OR MAILING OF THE ASSESSMENT NOTICE UNLESS AN ADMINISTRATIVE HEARING IS REQUESTED BY THE PERSON AGAINST WHOM THE PENALTY IS ASSESSED. FAILURE TO REQUEST AN ADMINISTRATIVE HEARING WITHIN 30 DAYS AFTER SERVICE OR MAILING OF THE ASSESSMENT NOTICE CONSTITUTES A WAIVER OF THAT PERSON'S RIGHT TO AN ADMINISTRATIVE HEARING. THE DEPARTMENT MAY EXTEND THE TIME PERIODS SPECIFIED IN THIS 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, THE DEPARTMENT MAY MODIFY, RESCIND, OR AFFIRM THE ADMINISTRATIVE PENALTY. THE MODIFICATION, RESCISSION, OR AFFIRMATION OF A PENALTY UNDER THIS SUBSECTION IS A FINAL AGENCY ACTION.

(E) A PERSON AGAINST WHOM AN ADMINISTRATIVE PENALTY IS ASSESSED MAY OBTAIN JUDICIAL REVIEW OF THE ADMINISTRATIVE PENALTY AS PROVIDED IN ALASKA RULES OF APPELLATE PROCEDURE. THE COURT MAY SET ASIDE, OR ADJUST THE AMOUNT OF, THE ADMINISTRATIVE PENALTY ONLY IF THE ADMINISTRATIVE RECORD, TAKEN AS A WHOLE, DOES NOT CONTAIN A REASONABLE BASIS TO SUPPORT THE FINDING OF OFFENSE OR THE AMOUNT OF PENALTY ASSESSED BY THE DEPARTMENT.

(F) ACTION UNDER THIS SECTION BY THE DEPARTMENT DOES NOT LIMIT OR OTHERWISE AFFECT ~~THE AUTHORITY OF THE DEPARTMENT~~ TO ENFORCE THIS CHAPTER, OR TO RECOVER DAMAGES, RESTORATION EXPENSES, INVESTIGATION COSTS, COURT COSTS, ATTORNEY FEES, AND OTHER NECESSARY EXPENSES; THE COURT SHALL REDUCE A JUDICIAL PENALTY SUBSEQUENTLY IMPOSED UNDER AS 46.03.760 BY ANY AMOUNT ORDERED TO BE PAID UNDER THIS SECTION BY THE SAME PERSON FOR THE SAME OFFENSE.

(G) THE ASSESSMENT OF AN ADMINISTRATIVE PENALTY UNDER THIS SECTION DOES NOT AFFECT THE OBLIGATION OF A PERSON TO COMPLY WITH THIS CHAPTER OR WITH A REGULATION, ORDER, PERMIT, OR APPROVAL OF THE DEPARTMENT UNDER THIS CHAPTER.

(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. IF THE DEPARTMENT PREVAILS IN COURT, THE COURT SHALL ORDER THE PERSON TO PAY

(1) THE AMOUNT OF THE ADMINISTRATIVE PENALTY ASSESSED;

(2) INTEREST AT THE STATUTORY RATE UNDER AS 45.45.010(A) FROM THE DATE THE PENALTY BECAME A FINAL AGENCY ACTION; AND

(3) REASONABLE ATTORNEY FEES AND COSTS INCURRED BY THE DEPARTMENT IN THE COLLECTION ACTION BEFORE THE COURT.]

* * * * *

COMMENT: In addition to civil penalties (up to $100,000 for the initial violation and up to $10,000 for each day thereafter while the violation continues) and criminal penalties (which the CAA 1990 requires but does not specify an amount), the CS also authorizes state administrative penalties, which are not required by federal law. Administrative penalties that appear to grant to ADEC on-the-spot "ticketing" authority are significant ($10,000 per day for each offense) and can be assessed without going to court. The first level of appeal would be to an administrative hearing officer. Judicial review (if the penalized person seeks review) would be under the "any reasonable basis" standard, which precludes the court from a thorough discretionary review of the penalty and favors the agency decision.

This provision, which is not required by federal law, should be deleted because of the potential for abuse and discriminatory application. Civil and criminal penalties (required for state program approval) and other enforcement authorities in the bill give ADEC all the tools it needs to enforce the state air program.

In 46.14.990, add the following new definitions and renumber definitions accordingly:

"direct cost" is any cost that can be identified specifically with a particular application or permit, including modification, amendment, revocation and reissuance, reopening, termination, monitoring and inspection;

"indirect cost" includes any cost that is not a direct cost, incurred to develop and implement the permit program and the federally mandated aspects of the small business assistance program. Indirect costs shall be determined in an equitable manner so that no source or source classification bears an unreasonable or disproportionate share of the cost of the permit program or the small business assistance program.

* * * * *

COMMENT: Subsection 250(b) requires that fees cover both direct and indirect costs, but no classification of those costs appears in the subsection. Inclusion of definitions of "direct" and "indirect" costs gives guidance and a standard to ADEC in the development of regulations. These definitions will assure a fair apportionment of the costs of the program among both large and small facilities.

Delete Section 14; add new section (to become part of 46.14) to read as follows:

Sec. ______________. Civil Penalties for Air Pollution.

(a) A person who violates or causes or allows to be violated a permit or regulation or any rule, order or waiver issued by the department under this chapter is liable, in a civil action, to the state for a sum to be assessed by the court of not more than $10,000 for the initial violation and for each day on which the violation continues.

(b) In determining the amount of a penalty assessed under this section, the court shall consider the effect of the offense on the public health or the environment, the size of the business, the economic impact of the penalty on the business, prior history of compliance or noncompliance with this chapter, and the violator's good faith effort to comply, the need to deter future offenses, the economic benefit of noncompliance realized by the offender, the duration of the violation as established by any credible evidence (including evidence other than the applicable test method), payment by the violator of penalties previously assessed for the same violation, the seriousness of the violation, and other factors that the court considers relevant. The department shall, by regulation, prepare, publish, and make available to interested persons, a penalty policy describing the factors to be considered in recommending penalties, the methods for weighing the factors, and other aspects of penalty computation.

* * * * *

COMMENT: The bill amends existing civil penalty provisions by adding violations of AS 46.14 to the civil penalty statute. The proposal does not include certain criteria contained in parallel federal penalty provisions (42 USC 7413(e)(1)) such as the owner's good faith efforts and past track record. Nor does it incorporate a requirement similar to that proposed for administrative penalties (AS 46.14.830) to adopt a penalty policy by regulation.

This amendment creates a separate civil penalty process applicable to air quality violations which includes certain federal criteria and requires that a civil penalty assessment policy be adopted by regulation. These changes will help assure fairness and predictability in the use and application of civil penalties.

AIR CONTAMINANTS AS "HAZARDOUS SUBSTANCES"

Delete Sections 23 and 24, and renumber subsequent sections of the bill.

* * * * *

COMMENT: Hazardous air pollutants will be extensively regulated by EPA (and hence, by the State of Alaska) through source emission standards under the Clean Air Act as amended in 1990. "Releases" into the air are currently covered under Alaska's strict liability statute (AS 46.03.822). This bill should not be used to create a cross-linkage to all the other statutes governing "hazardous substances," nor should it be used to authorize raiding the "470 fund" (spill cleanup monies) for purposes unrelated to the uses for which that fund was created.

Alaska State Legislature

REPRESENTATIVE
MARK BOYER

VICE-CHAIRMAN
HOUSE FINANCE COMMITTEE

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House of Representatives

TO: Representative Cliff Davidson, Chair
House Resources Committee

From: Representative Mark Boyer MB

Date: February 4, 1992

Subject: Amendment to HB 377 "An Act relating to prevention, abatement, and control of air pollution; and providing for an effective date."

Attached is a proposed amendment which I plan to offer at your next committee hearing of HB 377. The proposal is appropriate to this bill as it deals with alternate fueled vehicles and improved air quality under the 1990 Clean Air Act Amendments. I have been in contact with the sponsor of the bill, Representative Moyer, and he agrees that his bill is an appropriate vehicle for this amendment.

The amendment would require the Department of Transportation (DOTPF) when purchasing, leasing, or otherwise contracting for the procurement of vehicles for the State Equipment fleet, in geographic areas where DOTPF maintains a fleet of at least 15 vehicles, to acquire an alternative fuel vehicle under the invitation to bid process.

Anchorage, Fairbanks, and Juneau are in non-compliance with the Federal Clean Air Act's National Ambient Air Quality Standards (NAAQS), with a December 31, 1995 deadline for compliance. I feel that it is appropriate that the State take the responsibility and provide the leadership role in using clean-burning fuels which when used in motor vehicles can achieve significant reductions in harmful emissions.

FAIRBANKS 20B

The advantages of implementing a clean vehicle fleet are:

(1) a clean vehicle fleet program will help develop the State's infrastructure to meet the requirements of the Federal Clean Air Act;

(2) high costs associated with vehicle fleet operation and maintenance can be reduced by the use of alternative fuels;

(3) use of natural gas as one possible alternative fuel will develop additional markets for our natural gas reserves, bring additional revenue to the State, and, reduce, albeit in a very minor way, our dependence on imported oil and its refined products.

When this amendment is adopted, Alaska will join with 28 other states, (Texas has the most comprehensive program) which have enacted legislation regarding the use of alternative fuels to run both private and government owned vehicles.

There are currently two pilot projects utilizing alternative fuels; Municipality of Anchorage running compressed natural gas (CNG) automobiles, and Fairbanks DOT-PF utilizing liquid propane gas (LPG) to fuel one flat bed and 5 pickup trucks. The Anchorage project has recently been evaluated. The Fairbanks project just began in March 1991 and will not be evaluated before one year of operation and extreme cold weather testing.

This is an exciting area and I hope that the Committee will share my enthusiasm for what this amendment might foster for other uses of alternate fueled vehicles in non-government environments.

Nanci Jones of my staff is available should you need additional information at 3466. Thank you in advance for your consideration of this amendment.

7-LS1624\G.1
Lauterbach
02/17/92

AMENDMENT

OFFERED IN THE HOUSE BY REPRESENTATIVE BOYER

TO: CSHB 377( ); 7-LS-1624\G

Page 1, line 8:

Delete "PURPOSE. The"

Insert "PURPOSES. (a) The primary"

Page 2, after line 1:

Insert replacement of automobiles, light trucks and vans in the state fleet with vehicles

"(b) The legislature also recognizes that the acquisition by the state of automobiles, light trucks, and vans fueled by energy sources other than gasoline for inclusion in the state fleet and their regular use by state agency personnel in the state's major metropolitan centers would will materially contribute to the improvement of air quality in those communities. Therefore, another purpose of this Act is to require state agencies operating in nonattainment areas for carbon monoxide and particulate matter to procure alternative-fueled vehicles.

* Sec. 2. AS 14.09 is amended by adding a new section to read:

Sec. 14.09.030. ALTERNATIVE-FUELED BUSES. The department shall develop plans to encourage contractors that provide school bus transportation to procure alternative-fueled buses. In this section, "alternative-fueled" means capable of operating on a fuel such as compressed natural gas, liquefied petroleum gas, liquefied natural gas, methanol, ethanol, reformulated gasoline, or electricity that, compared to operation on regular fuel, results in lower emissions of oxides of nitrogen, volatile organic compounds, carbon monoxide, or particulates.

* Sec. 3. AS 36.30 is amended by adding a new section to article 1 to read:

Sec. 36.30.097. PROCUREMENT OF CERTAIN VEHICLES. (a) When the Department of Transportation and Public Facilities procures an automobile, light truck, or van for addition to the state fleet at a location in which the Department of Transportation and Public Facilities maintains a fleet of at least 15 vehicles, the procurement officer shall procure only an alternative-fueled vehicle if an alternative-fueled vehicle is available from an original equipment

A M E N D M E N T

OFFERED IN THE HOUSE BY REPRESENTATIVE BOYER

TO: CSHB 377( ); 7-LS-1624\G

Page 1, line 8:

Delete "PURPOSE. The"

Insert "PURPOSES. (a) The primary"

Page 2, after line 1:

Insert

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(b) In making a procurement under this section, the procurement officer may give a preference to an automobile, light truck, or van operated on compressed natural gas.

(c) In this section, "alternative-fueled" means capable of operating on a fuel such as compressed natural gas, liquefied petroleum gas, liquefied natural gas, methanol, ethanol, reformulated gasoline, or electricity that, compared to operation on regular fuel, results in lower emissions of oxides of nitrogen, volatile organic compounds, carbon monoxide, or particulates."

Renumber the following bill sections accordingly.

Page 28, line 24:

Delete "2"

Insert "4"

Page 28, line 26:

Delete "27"

Insert "31"

Delete "28"

Insert "32"

Page 28, after line 26:

Insert new bill sections to read:

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

* **Sec. 30.** Sections 2 and 3 of this Act take effect July 1, 1994."

Renumber the following bill sections accordingly.

Page 28, line 30:

Delete "2"

Insert "4"

Delete "3 - 26"

Insert "5 - 29"

Page 29, line 2:

Delete "2"

Insert "4"

MEMORANDUM

State of Alaska
Department of Transportation & Public Facilities

TO: Nanci Jones, Staff
Representative Mark Boyer
Capital Building # 411

DATE: February 4, 1992

FILE NO: 1080

TELEPHONE NO: 243-7671

FROM: Ken Langel K. Langel
Fleet Manager
Statewide Equipment Fleet

SUBJECT: Draft Legislation for Alternate Fuel Vehicles

I have reviewed the Amendment to HB 377 which deals with alternate fuel vehicles. The comments that follow parallel the ideas we discussed by phone earlier this morning.

1. The intent language to be added to Page 1, line 11, after "regulation" provides a clear statement that Alaska will benefit from the acquisition of alternate fuel vehicles. This is helpful language for setting the tone of new programs.

2. Sec. 14.09.030 seems to be okay as written.

3. Sec. 36.30.097 (a). This section, as currently written, will be difficult to comply with at this time. The following points should be considered.

   a. Unless the intent is to single out DOT/PF, the language in para (a) should refer to <u>all state agencies within the non-attainment areas</u>. In reality, the areas inclusive of Anchorage, Fairbanks, and Juneau all have more than 15 vehicles of the three types (autos, light trucks, vans) targeted for alternate fuel. Different wording, or a different approach to the 15 unit threshold, might ease the administrative burden of keeping track of what the next purchase needs to be vis-a-vis alternate fuel, conventional fuel.

   b. Language should be clear that procurement of alternate fueled vehicles should be made "where available from the original equipment manufacturer (OEM)". This clarifies that we are not retrofitting existing units, but purchasing factory units that are manufactured to run on alternate fuel.

   c. We need to be aware that at the current time, there is a very limited number of alternate fuel vehicle types available from OEMs. The Big Three (Ford, GM, Chrysler) are all developing programs, but current production and model selection is limited. As this improves, we will be in a better position to comply with alternate fuel vehicle requirements.

d. Alternate fuel vehicles, for a number of reasons, may not be suitable for some work situations encountered by state agencies. What provisions, if any, should there be for legitimate exemptions? One of the loudest objections voiced by users is that alternate fuel vehicles (particularly CNG units) have a very restricted range (about half that of conventional gas or diesel powered units). Many agency users are required to travel long distances from their base of operations; i.e., Anchorage based employees drive to Seward and Homer. Currently manufactured CNG units could not make that trip unless there were refueling stations on the Kenai Peninsula. This issue of range is more pertinent to Alaska than to other states who have developed alternate fuel legislation because of the nature of Alaska's road system, population, and geographical make-up.

e. Alternate fuel distribution systems need to be addressed. If we are to procure alternate fuel vehicles, we need fuel distribution stations where users can refuel their vehicles. For CNG in particular, the availability of refueling points is extremely limited in Alaska.

f. In summary, the wording of paragraph (a) may be too imperative. Because of problems discussed above, we may not be able to comply with mandatory requirements to procure alternate fuel vehicles at this time. Perhaps a change from imperative language to intent language would be appropriate to get the state moving in the direction of using alternate fuels, but at the same time allow us to move in concert with the development of distribution systems and availability of manufactured vehicles that run on alternate fuel.

4. Sec 36.30.097 (b). This section should include a specific preference. Procurement problems will most probably arise if the preference granted to bidders for alternate fuel vehicles is left up to the procurement officer. An appropriate price advantage similar to the state's five percent Alaska bidder's preference could be used. A range of five to ten percent would probably be appropriate.

I appreciate the opportunity to provide comment to this measure. Please do not hesitate to contact me if I can be of further assistance.

cc: Robert N. Bartholomew, Director, Admin Services
Katy McHugh, DOT/PF Legislative Liaison
Reading File

State & Local Relations

STATE GOVERNMENT INITIATIVES TO PROMOTE CLEAN TRANSPORTATION FUELS

A REPORT OF THE AMERICAN GAS ASSOCIATION STATE AND LOCAL SUBCOMMITTEE

Boldface indicates 1991 additions

The American Gas Association is heartened by the gathering momentum behind state government action to promote greater use of natural gas vehicles (NGVs) and other clean-fuel vehicles. The passage of the Clean Air Act Amendments of 1990 provides additional incentives for state and local governments to seriously consider the many benefits of an aggressive NGV program.

The natural gas industry is strongly committed to the development, commercialization and public acceptance of NGVs. NGVs can improve the environment by substantially reducing vehicular emissions of reactive hydrocarbons and carbon monoxide. In addition, since roughly two-thirds of all the oil consumed in the United States is used as a transportation fuel, NGVs can bolster national security -- and keep more of America's capital resources at home -- by displacing imported oil in the only major market where oil still has a monopoly.

Since 1987, individual cities and states have been leading the way in this important area. What follows is a report on significant actions to date.

<u>Arizona</u>: **In 1991, Chapter 176 was enacted which requires that the Director of the Department of Administration, in consultation with the State Energy Office, to implement a replacement program for fleets with vehicles that are the most fuel efficient in their class and to increase the use of alternative fuels in state-owned vehicles.**

In 1987, the Arizona Legislature enacted a law that mandates shifts to clean-fuel vehicles by certain public and private fleets in metropolitan Phoenix and Tucson. In 1988, the mandate was extended to buses, and natural gas was given a partial and temporary exemption from the state's motor fuels tax.

<u>Arkansas:</u> **In 1991, Act 659 creates a 9-member alternative fuels commission to coordinate and direct the alternative fuels market.**

AGA
American Gas Association
1515 Wilson Boulevard, Arlington, VA 22209 • (703) 841-8597

California: In September 1990, California enacted a number of measures that will help promote the use of NGVs. One law provides for tax credits for the cost of devices installed on new or used vehicles to convert them to Low Emission Vehicles. Credits are limited to $1000 per automobile and $3500 on other motor vehicles. Another law authorizes local units of government to assess emission fees to fund vehicle demonstration programs. A third law requires the Public Utilities Commission to evaluate and implement policies to promote the development of equipment and infrastructure needed to facilitate the use of NGVs and electric vehicles. The PUC must hold hearings, consider specific policies and provide the legislature with a progress report. The PUC also must sponsor workshops to address the regulation of the sale of natural gas for use in vehicles.

In September 1990, the California Air Resources Board adopted regulations for tailpipe emissions standards and test procedures for light- and medium-duty vehicles, and the distribution and availability of clean fuels. The proposal is designed to achieve the greatest possible emission reductions in the most efficient manner by spurring the development of advanced vehicle technology and allowing the use of cleaner-burning fuels. The regulations establish emission standards in four progressively more stringent categories: transitional low-emission vehicles, low-emission vehicles, ultra-low-emission vehicles and zero-emission vehicles. The phased-in production mandate for clean-fuel vehicles applies to vehicles produced for sale and use in the state of California. The hydrocarbon emission standards, expressed as non-methane organic gases (NMOG), include measurements of non-methane hydrocarbons, aldehydes, ketones, and alcohols. The NMOG will be adjusted for reactivity and starting with the 1994 model light-duty vehicle (including passenger cars) category, will have to meet a fleet average NMOG standard. A system for earning marketable credits for use in complying with fleet average standards will be established.

The Clean Air Act Amendments of 1990 include a California Pilot Program which requires, at a minimum, 150,000 clean-fuel vehicles to be produced, sold and distributed annually in 1996-98. Beginning in 1999, 300,000 such vehicles must by produced, sold and distributed annually.

In September 1989, the California legislature enacted two measures that promote the vehicular use of natural gas and other clean transportation fuels. One law provides that, until 1995, the incremental cost of any clean-fuel vehicle will be exempt from the state's 6 percent sales tax. Another law requires that, subject to vehicle availability, at least 25 percent of all newly acquired state government vehicles must have clean-fuel capability.

In the Los Angeles Basin, the South Coast Air Quality Management District has developed an Air Quality Management plan, aimed at achieving Clean Air Act standards by 2007. Although the plan has no force of law, it will be a factor in EPA decisions on noncompliance penalties. This has the effect of making the plan binding in the sense that significant departure from the plan would provide grounds for litigation and federal intervention. The plan includes a commitment by South Coast to issue a clean-fuels mandate for both private and public fleets in the Los Angeles Basin -- a policy that could affect up to 1 million vehicles over the next 14 years.

Colorado: A 1990 Colorado law requires that 10% of the new motor vehicles purchased or leased by state agencies during fiscal year 1991-92 operate on clean fuels.

Each year thereafter through FY94-95, an additional 10% must use alternative fuels. New vehicles may be bi-fuel, and existing vehicles may be converted to reach the percentage requirements. Emergency vehicles and heavy-duty vehicles are exempt. The law also removes the sale of natural gas as a vehicle fuel from the jurisdiction of the public utilities commission.

In 1989, the Colorado Legislature enacted a law that provides a $200 rebate for any person who acquires a clean-fuel vehicle or retrofits an existing vehicle. State and municipal agencies are also eligible to receive the rebates, which are capped at five vehicles per person.

Connecticut: In 1991, the General Assembly passed two bills related to alternative fuels. Act 91-142 directs the Commissioner of Environmental Protection to conduct a study on the adoption of California's emission standards.

Act 91-179 establishes a 10% tax credit for any investments or expenditures relating to alternative fuel vehicles until 1993. Alternative fuel vehicle tunnel restrictions were removed. Also, effective October 1, 1991, this Act exempts from the sales tax and use tax: new vehicles that use clean alternative fuel; equipment to convert vehicles to clean alternative fuel or to dual use of a clean alternative fuel and another fuel; and, equipment incorporated into or used in compressed natural gas filling stations.

A bill aimed at global warming was passed in May 1990. Of interest in the bill is a section that prompts the Standardization Committee of the Public Works Department to "consider vehicles using alternative fuels when considering new purchases."

District of Columbia: In December 1990, the District of Columbia enacted sweeping alternative fuels legislation. The law requires government and private owners and operators of fleets of 10 or more to convert 5 percent of their vehicles to operate on clean alternative fuels each year beginning in 1993 through 2000. Reformulated gasoline is excluded from the clean alternative fuels definition.

The law also bans, effective 1998, commercial vehicles not powered by an alternative fuel from operating in the Central Employment Area (downtown area) of the District from sunrise to sunset between May 1 and September 15, the period when smog is particularly bad.

By February 15, 1992, and on October 1 of each subsequent year, each owner and operator of a commercial fleet is required to submit plans to the mayor that contain specific short- and long-range goals and timetables for the implementation of a clean alternative fuels program. Fines of up to $5000 per day for noncompliance may be levied.

Florida: In October 1991, the governor of Florida passed Executive Order 91-253 mandating alternative fuels in state agency vehicles. By January 1, all state agencies must submit FY 92-93 budget amendments to begin use of alternatively fueled fleet vehicles in air quality nonattainment areas. By the year 2000, all possible fleet vehicles will be required to use the most efficient, least-polluting alternative fuels. Highly visible demonstration programs using new technologies are also mandated. The governor's office will also make changes to implement the use of alternatively fueled fleet vehicles in FY 92-

93 with the goal of operating all possible fleet vehicles on alternative fuels. Florida's Energy Office, in conjunction with the Department of General Services and agency fleet managers, will develop a comprehensive state plan for alternatively fueled vehicle purchases and fueling and service infrastructure.

Hawaii: In 1991, the legislature passed two bills related to alternative fuels. SR 154 and SCR 175 requests that the Department of Business, Economic Development and Tourism, with the Department of Accounting and General Services, determine 1) alternative motor vehicle fuels, 2) conversion costs, 3) additional purchasing costs for alternatively fueled vehicles, 4) comparative costs of fossil and alternative fuels, and 5) short- and long-term benefits of using alternative fuels.

Iowa: In 1991, SF-508 establishes a mandate, beginning in 1992, that at least 5% of the new state vehicles purchased shall be equipped to utilize alternative fuels, increasing to 10% in 1994. Also, alternatively fueled vehicles may be financed under the Iowa Energy Bank Program, which provides energy financing for the state, state agencies, political subdivisions, school districts, area education agencies and community colleges.

Louisiana: SB 537 was passed in 1991 providing a 20% income tax credit for clean burning alternatively fueled vehicles and property related to the dispensing of such fuel.

In 1990, Louisiana enacted legislation that requires 30% of new state agency fleet vehicles to have clean-fuel capability as of September 1, 1994. The mandate increases to 50% in 1996, and could increase to 80% in 1998, pending a review of the program by the Louisiana Department of Environmental Quality.

The legislature has directed the Public Service Commission to deregulated the direct sales of natural gas by producers, pipelines, distribution companies or other persons for vehicle fuel purposes.

Maryland: The Maryland NGV Working Group, comprised of natural gas utility representatives from around the state, will have recommendations to submit to the legislature on compressed natural gas- and LNG-powered vehicles in 1992.

Massachusetts: In December 1990, Massachusetts enacted a law that will allow the Commonwealth to adopt the non-methane hydrocarbon emissions standards based on California's 1994 low-emission vehicle standards. The Massachusetts standards are to be phased in, beginning with model year 1993 vehicles, and prohibit any corporation or person from selling vehicles in the state unless they comply with the standards. In model year 2000, the hydrocarbon standard that can be met by gasoline-powered vehicles will be completely phased out.

The statute's language would allow Massachusetts to delay implementation of these standards by up to two years if the state determines that other New England states or New Jersey are unlikely to adopt the California standards. New York adopted California standards in 1990. (see New York)

Exemptions to the program are available for certain vehicles, such as used vehicles that are sold as used vehicles in Massachusetts. Exemptions also are available for vehicles originally registered outside of Massachusetts but brought into the state because of ownership transfers pursuant to inheritance, divorce or legal separation.

Minnesota: Minnesota deregulated the sales of natural gas for resale to end-users for vehicle fuel purposes, making such sales a non-utility function. (1984)

Missouri: Passed in 1991, HB 45 sets a timetable for the conversion of government vehicle fleets to alternative fuels. Any fleet of 15 or more vehicles must convert 10% by July 1, 1996, 30% by July 1, 1998, and 50% by July 1, 2000, to be capable of burning alternative fuel. By July 1, 2002, 30% of government vehicles *must operate solely* on alternative fuels.

Nevada: AB 812 relates to clean air; requires the state environmental commission to conduct public hearings and submit a report concerning the use of alternative fuels in certain motor vehicles; requires the state environmental commission to adopt the laws of California concerning certain emmission tests for diesel vehicles.

New Mexico: In 1991, the legislature passed HM 23 which establishes the Clean Alternative Fuel Task Force.

New York: a 1991 *New York City* ordinance requires the city to purchase 385 alternative fuel motor vehicles by June 30, 1992, and establishes a rate of purchase for alternative fuel buses.

In Fall 1990, the New York Department of Environmental Conservation adopted California's 1993 motor vehicle emission standards and durability requirements. Beginning in 1993, 40% of passenger cars and light-duty trucks and certain medium-duty vehicles manufactured for sale in New York must meet exhaust standards of 0.25 gm/mi for hydrocarbons, 0.4 gm/mi for nitrogen oxides and 3.4 gm/mi for carbon monoxide. The percentage rises to 80% in 1994 and 100% in 1995. All emission control equipment must be certified to last 100,000 miles. As noted earlier, California has since adopted more stringent standards. New York is expected to follow suit, maintaining an equivalent program.

In August 1990, New York embarked on a six-year, $40-million state demonstration program to operate 268 cars, buses and trucks on alternative fuels. The vehicles will be purchased or retrofitted, operated throughout the state, and tested extensively for performance, durability and emissions. In addition, several fueling facilities will be built, and funding will be provided for driver and mechanic training and an information network. The vehicles operating on natural gas in the program will include buses and light- and heavy-duty trucks.

Also in August 1990, The Port Authority and the Triborough Bridge and Tunnel Authority (TBTA) jointly announced that they have opened access to their tunnels and bridges "to certain [dedicated] alternative-fueled motor vehicles that reduce air pollution." The TBTA fully lifted its ban on bi-fuel vehicles as well.

In 1989, three state agencies issued a jointly developed New York State Energy Plan that calls for a 50% increase in natural gas use by 2008. While the plan stopped short of advocating an outright mandate for the use of clean transportation fuels, it did call for accelerated state government demonstration programs and asserted that New York State "should encourage the use of compressed natural gas as a transportation fuel".

North Carolina: Chapter 738 requires the Energy Division of the Department of Economic and Community Development and the Department of Administration to study the use of clean transportation fuels in state-owned vehicles and to develop a demonstration project using natural gas as the fuel for state-owned vehicles.

Oklahoma: The "1991 Alternative Fuels Conversion Act" (HB 1193) provides for a 50% tax credit for conversion of a vehicle to liquid propane gas, liquid natural gas and compressed natural gas and for equipment used to fuel vehicles for a period of two years. The 50% tax credit is applicable from December 31, 1990 to January 1, 1993. At the end of the two-year period, the tax credit reverts back to the 20% implemented in 1990 by the legislature.

The Office of Public Affairs currently administers the $1.5 million Oklahoma Alternative Fuels Conversion Fund. The fund will reimburse costs to any state, county, municipal or school district, up to $3500 per conversion, that voluntary converts a vehicle to compressed natural gas, LNG, propane, ethanol or electricity. The fund will also pay the costs, up to $100,000, to install fueling stations. In return, the agencies will repay the fund from the fuel savings achieved until the fund is repaid. Repayment will be suspended if the clean fuel price is not below the price of the fuel displaced by the alternative fuel.

Also, the sale of compressed natural gas, liquid natural gas, and liquid propane gas as a vehicle fuel was deregulated.

Oregon: Enacted in 1991, SB 765 requires a certain percentage of state vehicles to be capable of using alternative fuel to the maximum extent economically possible. After July 1, 1994, the state shall acquire only alternative fuel vehicles except in areas unable to economically dispense alternative fuel.

SB 766 requires motor vehicles, subject to the control of certain mass transit and transportation districts, to use alternative fuel to the maximum extent economically possible.

HB 2130 expands the energy conservation tax credit programs to include costs associated with acquiring and operating alternatively fueled fleet vehicles. It also permits investor-owned utilities to offer commercial and industrial customers cash to assist in the purchase of alternatively fueled fleet vehicles and fueling facilities.

HB 3344 establishes two studies. First, the Department of Transportation will study the feasibility of replacing department passenger-carrying gasoline vehicles with NGVs. The second directs the Department of Energy, in consultation with the Economic Development Department, to assess renewable fuels and cost of achieving state fuel independence.

The Oregon Department of General Services has established a demonstration program for clean-fuel vehicles. The Salem state motor pool is operating a 2-year demonstration program using 14 bi-fuel vehicles. Thus far, the program administrators are very pleased with all aspects of the NGVs. Another 20-vehicle procurement is being considered.

Pennsylvania: In December 1989, both Houses of the Pennsylvania legislature adopted a resolution that urges Congress "to enact a meaningful mandate for phased shifts to alternative transportation fuels by a substantial number of our nation's vehicles, and to assure that any such mandate permits undistorted competition, under comparable regulatory conditions, between all transportation fuels that are substantially cleaner than oil-based products." The Pennsylvania resolution also urges Congress "to enact tax incentives for the private sector, and financial assistance incentives for the states and municipalities, in order to reduce the obstacles posed by initial capital expenditures for shifts to alternative transportation fuels."

South Dakota: In 1990, the South Dakota Legislature passed a resolution, patterned closely after the Pennsylvania resolution, that urges Congress "to enact a meaningful mandate for phased shifts to clean transportation fuels by a substantial number of our nation's vehicles." Like the Pennsylvania resolution, the South Dakota resolution also calls for federal tax incentives for the private sector, federal financial assistance incentives for states and municipalities, and federal policies that permit "undistorted competition" between clean transportation fuels.

Texas: **In 1991, the Texas legislature passed sales tax exemption status for propane and natural gas as a motor vehicle fuel.**

In May 1989, the Texas legislature enacted two laws that mandate a phased shift to clean transportation fuels by certain vehicles in nonattainment areas. The mandate covers all metropolitan buses, state agencies with fleets of over 15 vehicles and school districts with fleets of over 50 school buses. The mandate directs affected fleet operators to attain clean-fuel capability for all vehicles acquired after September 1, 1991. Retrofitting of vehicles will be necessary in the probable event that sufficient clean-fuel vehicles are not yet available directly from Original Equipment Manufacturers.

The following targets for compliance must be met:

30% of each affected fleet by September 1, 1994;
50% of each affected fleet by September 1, 1996; and
If certain findings are made by the Texas Air Control
Board, 90% of each affected fleet by September 1, 1998.

The Texas Air Control Board is also empowered to set mandates for most local government fleets of over 15 vehicles --and for private fleets of over 25 vehicles.

For compliance, vehicles must have the capability to use compressed natural gas "or other alternative fuels that result in comparably lower emissions of oxides of nitrogen, volatile organic compounds, carbon monoxide, or particulates or any combination of them". Exemptions can be obtained if refueling facilities are unavailable and/or if clean-fuel suppliers do not offer adequate financing.

Enactment of these laws followed a one-year state government demonstration program, involving 12 state government vehicles, which showed that retrofitting vehicles to natural gas led to substantial reductions in operating costs and dramatic improvements in emission levels.

Texas also passed HB 1878, which deregulates the sale of natural gas for resale to end users for vehicle purposes, making such sales a non-utility function, effective September, 1989.

Utah: **Several programs were established with HB 122 and HB 142. A Clean Fuel Private Sector Incentive Program will award monies from an annual budget of $10,000 to private sector conversions or purchases of clean-fuel vehicles. The second law established the revolving Clean Fuel Conversion Fund. An appropriation of $10,000 will be given annually. Up to $3,000 per government vehicle may be loaned out to government departments, school divisions, etc. with repayment required within seven years.**

Virginia: **In 1991, Virginia passed extensive alternative fuels legislation. SJR 206 and HJR 481 established an 18-month pilot project in Northern Virginia, Greater Metropolitan Richmond, and Hampton Roads to determine the feasibility of domestic clean fuels.**

HB 1401 prohibits the School Board from preventing the use of alternative fuels in school buses.

HJR 321 calls for each of the seven school divisions to develop plans for conversion of bus fleets to alternative fuels emphasizing compressed natural gas.

HB 1454 makes loans available from the Literary Fund to purchase alternative fuel buses, to convert buses to alternative fuels, and to build alternative fuel refueling facilities.

HJR 334 furthers the joint subcommittee on Clean Transportation Fuels through the 1992 legislative session.

SB 627 allows SCC to deregulate the sale of natural gas as a vehicle fuel on a case-by-case basis.

HJR 336 provides for the removal of tunnel restrictions on alternatively fueled vehicles.

In 1990, the Virginia General Assembly created a special joint subcommittee to study the possible use of natural gas vehicles and other clean-fuel vehicles in the state. The group is studying the emissions, economics, safety and other benefits of clean-fuel vehicles that could be purchased or leased by state agencies, school districts and local transit authorities. The subcommittee held seven hearings on clean-fuel vehicles and related issues last year, at various locations around the state.

The Virginia NGV Working Group, comprised of natural gas utility representatives from around the state, prepared a white paper to suggest options for an NGV program in Virginia. Many of the group's recommendations were included in the enacted package of legislation.

Washington: In 1991, municipal and state legislation made significant strides in alternative fuels. King County Ordinance 9891 provides that at least 50% of the vehicles purchased in 1992 shall use alternatives fuel and at least 75% in 1993; this may include the conversion of existing vehicles.

Ordinance 9892 waives the licensing fee from 1991-1996 for taxicabs and for-hire vehicles using alternative fuels.

Ordinance 9893 makes an appropriation of $132,500 from the Public Works Fund and Motor Pool Fund to implement the Alternative Fuels Pilot Program.

The state Clean Air Bill (HB 1028) requires 30% of vehicles purchased on state contracts to use clean fuels after July 1, 1992, increasing 5% each subsequent year. Preference will be given to dedicated clean fuel vehicles, however, conversions may be used in a one to one ratio. Also, the law finds compressed natural gas fueling infrastructure development imperative and to be in the public interest.

In 1989, the Washington legislature enacted a law requiring the state's Department of Transportation to "consider" acquiring clean-fuel vehicles where they are feasible and economically justified.

West Virginia: The governor, by means of executive order, initiated a test group of state vehicles to be converted to use compressed natural gas. The executive order seeks to establish a series of natural gas refueling stations to be operational by September 30, 1991 for use by the converted vehicles.

Wisconsin: Wisconsin received federal funding approval for a program to assist municipalities in converting their fleets to utilize alternative fuels and displace gasoline use by 85%. Qualified local governments may receive up to $30,000, or maximum of $2,000 per vehicle, under the two-year program. The Energy Department has allocated $150,000 for the program, funded by the Energy Overcharge Fund.

Governor Tommy G. Thompson has appointed a task force composed of cabinet members to monitor a state fleet alternative fuels pilot program and to develop state policy on the use of alternative fuels.

The Northeastern States: Eight northeastern states have agreed in principle to adopt stronger auto emissions standards, equivalent to those in California. The new standards would apply to model-year 1993 vehicles that enter commerce in Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island and Vermont. The plan was drafted by the Northeast States for Coordinated Air Use Management, but each state will develop its own program. New York and Massachusetts have already done so. Maine and Rhode Island may be next in line.

State and Local Groups: A number of organizations representing state and local governments or agencies have adopted policy statements supporting the increased use of natural gas, especially in vehicles, as a viable way to pursue America's environmental and energy security goals. Groups endorsing this policy include the National Governors Association, the National Association of State Energy Officials, the National League of

Cities, the Energy Council (formally the South/West Energy Council) and the National Conference of State Legislatures. The National Association of Regulatory Utility Commissioners (NARUC) has adopted a resolution to "further encourage the development and widespread use of natural gas vehicles."

AMERICAN GAS ASSOCIATION
STATE AND LOCAL AFFAIRS SUBCOMMITTEE

KENNETH GAUDI, Manager, State Government Issues
at Peoples Natural Gas Co., CHAIRMAN

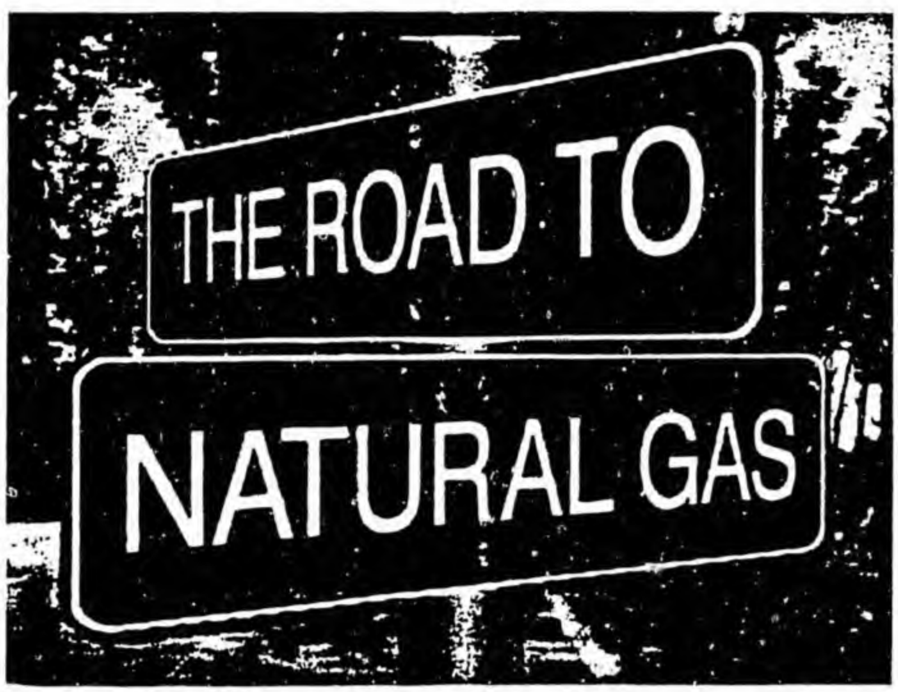
ANDY McGINN, Manager, State and Local Relations
at the American Gas Association, STAFF EXECUTIVE
703/841-8597

October 1, 1991

American Gas Association
1515 Wilson Blvd.
Arlington, VA 22209

NGV

NATURAL GAS VEHICLES



NGV

The road to clean air.

The choice is clear. For transportation that's clean, affordable and safe, natural gas vehicles are the answer.

People all over the world recognize the advantages of natural gas as a vehicular fuel. It's **clean burning**: emits 85 percent less pollutants than gasoline. It's **affordable**: costs about 50 percent less than gasoline. It's proven to be **safe**: not only is natural gas itself safer than gasoline, the cylinders used to store it are sturdier than a gasoline tank. It **performs**: natural gas yields the same miles per gallon as gasoline, can travel at the same speed and about the same distance before refueling. And it's abundantly **available**: 93 percent of the gas we use in the U.S. is found right here, increasing our energy security.

These advantages are some of the reasons why more than 30,000 natural gas vehicles are currently in use across the United States, and close to a million around the world. And that's why some states are enacting legislation that mandates the use of cleaner fuels, like natural gas, for our nation's fleets.

The time is now, for Florida -- its leaders, businesses and people -- to clean up our air. And the road is open.

The road to natural gas.

Air Quality

In Florida, six counties exceed the Environmental Protection Agency's Air Quality Standards: Broward, Dade, Duval, Hillsborough, Palm Beach and Pinellas. That means more than 3.5 million Floridians regularly breathe air that exceeds acceptable pollution levels.

Vehicles, and vehicle fueling infrastructure, are the sources of about two-thirds of carbon monoxide emissions. Diesel buses and trucks also emit particulates -- that black, sooty residue that can damage your lungs -- another serious component of air pollution. The vehicles we drive are responsible for 40 percent of the nation's smog.

Natural gas as a vehicle fuel can significantly reduce these emissions. Natural gas vehicles (NGVs) emit 99 percent less carbon monoxide, 65 percent less nitrous oxides, and 92 percent fewer reactive hydrocarbons than gasoline vehicles. And because natural gas is smokeless, particulate emissions from NGVs are virtually nonexistent.

As the quality of our air continues to deteriorate, our efforts to find cleaner ways to travel strengthen. President Bush's new Clean Air Act is an example of the type of legislation local governments are enacting to "clean up their act." Natural gas, as the cleanest burning fossil fuel, is a favored alternative.

Savings

Natural gas vehicles are less expensive to operate than gasoline vehicles.

In Florida the price per equivalent gallon of natural gas is about $.55 cents. Compare that with the average cost of $1.10 per gallon for gasoline, and the savings are obvious.

Because natural gas is such a clean fuel, maintenance costs are lower, too. The engines require less frequent tune-ups, spark plug changes, and last longer than gasoline engines do. Some customers say they can double the time span between tune-ups and still achieve maximum performance.

Converting a vehicle to run on compressed natural gas (CNG) generally costs $2,000 - $3,000, depending on the size of the vehicle and the total number of vehicles being converted.

Payback on the conversion varies with the number of miles driven annually, but is usually less than three years.

Price differential .50c (gasoline - CNG)

	Miles driven per vehicle, per yr.			
MPG	15,000	20,000	25,000	30,000
5	$1,500	$2,000	$2,500	$3,000
7.5	$1,000	$1,333	$1,667	$2,000
10	$750	$1,000	$1,250	$1,500
12.5	$600	$800	$1,000	$1,200
15	$500	$667	$833	$1,000
20	$375	$500	$625	$750

Safety

The unique properties of natural gas make it one of the safest vehicular fuels on the market today.

There are two reasons for this excellent safety record: the structural integrity of the NGV fuel system, and the physical qualities of the fuel itself.

The fuel storage system of an NGV is composed of steel or aluminum cylinders, which are much stronger than a gasoline tank. Because of this, the cylinders actually add to the structural integrity of the vehicle and help protect passengers in the event of a collision.

These cylinders are subject to rigorous abuse tests, such as pressure extremes, gunfire, heat extremes, collisions and fires, and have not failed.

NGV fuel systems are also a "closed loop", which prevents any spills or evaporative losses. Even if a leak did occur in an NGV system, the natural gas would dissipate into the atmosphere because it is lighter than air.

Natural gas itself has a high safety record, with an ignition temperature twice as high as gasoline, and a narrower range of flammability. This reduces the risk of spontaneous combustion. CNG is also neither corrosive nor toxic.

Studies have proven that injury rates were significantly lower for NGVs than for gasoline-powered vehicles. Of 434 million miles traveled by comparable NGVs and gasoline vehicles, there were 84 percent fewer injuries per mile in the NGVs.

Performance

When it comes to performance, natural gas vehicles rate high. Because CNG is already in a gaseous state, and has an octane rating of 130, NGVs are easier to start, in both hot and cold weather. NGVs experience less knocking, and no vapor locking. And they travel at speeds equivalent to a comparable gasoline-powered vehicle, at the same miles per gallon.

Converting a vehicle to run on CNG is simple. No major engine modifications are required, and vehicles can be converted to run on CNG only (dedicated) or on either CNG or gasoline (bi-fuel).

In a bi-fuel vehicle, a switch mounted on the dashboard allows the driver to change from CNG to gasoline if his supply is low and he's not near a filling station.

The CNG fuel tank is a steel or aluminum cylinder that can be mounted under a vehicle, in the bed or on top of a truck, or in the trunk of a car. When the vehicle is started, the CNG flows from the fuel cylinder through the master shut-off valve into a high pressure fuel line. The CNG from the fuel line enters a pressure regulator, where it is reduced from 3,000 pounds psi to 20 psi.

A solenoid valve then opens, and the CNG enters the engine's combustion chamber, where it is ignited to create power to drive the vehicle. Unlike gasoline, which must be vaporized before ignition, CNG enters the combustion chamber already in a gaseous state.

In a passenger car, two cylinders of CNG provide the equivalent of 10 gallons of fuel. Trucks and other larger vehicles can be equipped with more cylinders to provide a driving range of 300 miles.

Supply

Natural gas is in abundant supply. More importantly, 93 percent of that supply is right here in the United States, making natural gas the most dependable, secure and **domestic** energy source available.

Studies show the resource base of conventional natural gas supply in the lower 48 states alone is enough to meet demand for the next 50 years. When you include non-conventional sources of gas, and gas from other countries, we can increase our consumption and *still* have enough gas to meet the new demand for more than 140 years.

Increasing our use of natural gas for vehicles doesn't just clean up our air and save us money, it aids in energy security for our country. If just 5 percent of the nation's fleet vehicles were converted to compressed natural gas, the United States could decrease oil imports by 500,000 barrels annually, resulting in a dollar savings of $4 **billion** a year.

Although the gas is abundantly available, the number of public filling stations is limited. Fleets normally have their own private fill stations, which two or more companies located conveniently can share for reduced costs.

Refueling of NGVs is done in either a quick fill, which takes about two to five minutes; or a timed fill, which allows vehicles to refuel overnight, when the vehicles are retired for the day.

American Gas Association

Natural Gas Vehicle is published bimonthly by the American Gas Association, 1515 Wilson Blvd., Arlington, VA 22209. **Natural Gas Vehicle** is protected through a pending trademark registration in the U.S. Patent Office.

Natural Gas Vehicle's aim is to keep fleet owners and operators, vehicle equipment manufacturers and suppliers, government officials and other interested parties informed of important developments concerning market growth for natural gas-powered vehicles, thereby encouraging active participation in and support of the use of natural gas to operate vehicles.

MARATHON continued from page 1

State Gas Co. provided the natural gas for the NGVs.

Commenting on the arrangement at an advance news conference, Boston Marathon legend Bill Rodgers said, "In the scores of marathons I've run in around the world, this is the first time the athletes will breathe fresh air and not have to endure dangerous vehicle exhaust emissions. From my experience as a front runner in past marathons, I can say that this is a long overdue and positive development."

"We were delighted with the idea," added Marathon Director Guy Morse of the Boston Athletic Association. "After 94 years," Morse said, "we'll all breathe a little easier knowing that our leading runners will be enjoying cleaner air directly in front of them throughout the entire race."

Other news conference participants included wheelchair athletes Jane Raymond-Hall and Louis Antonio, as well as Boston Gas President Chester R. Messer.

In a statement released at the news conference, A.G.A. President Michael Baly III congratulated Boston Gas and the organizers of the Boston Marathon for "giving the runners a break this year." Messer, noting that his company is converting its entire vehicle fleet over the next few years to operate on natural gas, expressed confidence that "natural gas will be 'out front' no matter who wins the Boston Marathon."

For additional information, call Frank A. Arricale, Boston Gas' director of public information, at 617/742-8400.

Advertisements promoting recent A.G.A. member company natural gas vehicle activities, including fuel station openings and a strong presence in the Boston Marathon, have appeared in *The Wall Street Journal, The Washington Post,* and *Tulsa World,* and are included in this issue of the *Vehicle.*

Executive Order Guides Federal Vehicle Buys

An executive order announced April 17 by President George Bush targets the federal government's procurement of alternative-fuel vehicles as a key ingredient of the new federal energy mandate.

The order, which focuses on conservation in federal buildings and facilities and on fuel savings in federal vehicle use, directs the U.S. Energy Secretary to ensure that the federal government purchases annually the "maximum number practicable" of alternative-fuel vehicles as required by the Alternative Motor Fuels Act of 1988. The law provides $18 million for federal procurement of alternative-fuel vehicles. Bush's order seeks to have the "maximum number practicable" be original equipment produced by manufacturers, and seeks to initiate procurements in model year 1995.

In addition, the executive order calls for federal vehicle fuel efficiency by directing agencies operating fleets of 300 or more vehicles to reduce gasoline and diesel consumption by 10 percent by 1995, using 1991 as the baseline. Use of alternative-fuel vehicles will count toward the 10-percent reduction.

Under the order, federal procurement of alternative-fuel vehicles will be guided by requirements that life-cycle costing methods be incorporated in buying decisions, a provision designed to spur private industry to develop energy-efficient equipment.

The executive order, says Bush, "is an important component of the National Energy Strategy, and it demonstrates our commitment to a balanced approach for achieving an energy future that is secure, that is efficient, and that is environmentally sound."

NFIB Alaska

National Federation of
Independent Business

March 18, 1992

The Honorable Dave Donley
Chairman, House Judiciary Committee
Alaska State House of Representatives
P.O. Box V
Juneau, Alaska 99811

RE: HB 377

Dear Representative Donley:

On behalf of the 5292 members of NFIB/Alaska, I would like to express our appreciation for time and effort you have been devoting to the bill implementing the federal Clean Air Act Amendments of 1990.

The Department of Environmental Conservation has estimated this bill will effect 600 small businesses in Alaska that have not been previously regulated. There are several sections of HB 377 that are of particular concern to NFIB/Alaska because it gives the department additional authority not specifically required by the federal law. It gives them additional authority to: regulate more types of sources; set more stringent emission standards; regulate more kinds of air pollutants; and, to impose administrative penalties. NFIB/Alaska suggests that all sections giving them additional authority, beyond those prescribed in the federal standards, be deleted.

If required by the department, the bill allows them to set application deadlines earlier than 12 months. We suggest that the language giving them the authority to set shorter application deadlines be deleted.

When the federal administrator exempts a source, the bill allows the department to may(be) exempt the source. We suggest that the language giving them the authority to may(be) exempt the source be changed to require (shall) them to exempt the source.

State Office
9159 Skywood Lane
Juneau, AK 99801
(907) 789-4278

As you know, the legislative agenda of NFIB/Alaska is determined by our ballot. The ballot is our annual poll of our members on a series of issues deemed critical to small business. A majority vote sets our policy and position on legislative issues. The following is the result of one of the questions on our 1991 poll:

> Should legislation be passed to prohibit the Department of Environmental Conservation from imposing environmental standards and limitations that are stricter than federal standards?
>
> 61.1% Yes 33% No 5.9% Undecided

Also, caution needs to be exercised in drafting language for the fees in HB 377. Historically the Department of Environmental Conservation has been regulating mostly large corporations. By their own estimation, 600 small businesses that have not been previously regulated soon will be regulated. What may seem like a small or reasonable fee to the personnel at the department, or a large corporation could be very onerous to a small business owner. Language needs to be included in the bill that states: the fees are to be no more than absolutely necessary to meet the federal requirements for funding of the program.

Also, these fees are to be sufficient to cover the costs to develop and implement the program. The fees are not to significantly exceed the cost to develop and implement the program. The term "but not significantly exceed" is used twice on page 8, lines 3 and 25. What may be determined to "not significantly exceed" the costs to develop and implement the program by this administration may be viewed entirely differently by subsequent administrations. To help clarify this point, the language "do not significantly exceed" needs to be changed to "do not exceed" the cost.

From a "real world" perspective, the department has prepared some informational handouts but, this information is not very widely distributed to the public. Additionally, information on this issue is difficult to obtain from EPA. I have been calling the EPA Small Business Liaison person since early January attempting to obtain a copy of their booklet "A Guide for Small Business on the Clean Air Act Amendments of 1990." I recently received a note from EPA informing me the "publication is not expected until another month plus."

Hopefully since HB 377 contains the Small Business Assistance Program help for small businesses to comply with the law may be available. I recently sent a legislative update to our members and devoted 1/3 of it to this issue. To raise public awareness, it would be helpful if you or the department would hold a press briefing. Also, you and other legislators might want to consider including some information on this issue in your mailings to constituents.

I appreciate having the opportunity to share with you some of the concerns of the small business community. I look forward to working with you on this and other issues of importance to small business owners.

Sincerely,

Resa

Resa Jerrel
State Director

NFIB Alaska

National Federation of
Independent Business

POSITION PAPER

OF

NATIONAL FEDERATION OF INDEPENDENT BUSINESS
(NFIB/ALASKA)

TO THE

HOUSE JUDICIARY COMMITTEE

MARCH 18, 1992

ON

CSHB 377(RES)

AN ACT RELATING TO AIR QUALITY CONTROL AND THE PREVENTION, ABATEMENT, AND CONTROL OF AIR POLLUTION; RELATING TO CIVIL AND CRIMINAL PENALTIES, DAMAGES, AND OTHER REMEDIES FOR AIR QUALITY CONTROL VIOLATIONS; AMENDING THE DEFINITION OF 'HAZARDOUS SUBSTANCES'; RELATING TO USE OF THE OIL AND HAZARDOUS SUBSTANCE RELEASE RESPONSE FUND; RELATING TO INSPECTION AND ENFORCEMENT POWERS OF THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION; AND PROVIDING FOR AN EFFECTIVE DATE.

9159 Skywood Lane
Juneau, AK 99801

The Guardian of
Small Business

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, MY NAME IS RESA JERREL, AND I REPRESENT THE NATIONAL FEDERATION OF INDEPENDENT BUSINESS - NFIB/ALASKA. I WOULD LIKE TO THANK YOU FOR THE OPPORTUNITY TO COMMENT ON HB 377.

FOR SOME BACKGROUND INFORMATION: NFIB/ALASKA IS COMPRISED OF 5,292 SMALL AND INDEPENDENT BUSINESS OWNERS. THE LEGISLATIVE AGENDA OF NFIB/ALASKA IS DETERMINED BY OUR BALLOT. THE BALLOT IS OUR ANNUAL POLL OF OUR MEMBERSHIP ON A SERIES OF ISSUES DEEMED CRITICAL TO SMALL BUSINESS. A MAJORITY VOTE, OF THE MEMBERS IN RESPONSE TO THE POLL, SETS OUR POLICY AND POSITION ON LEGISLATIVE ISSUES.

THE FOLLOWING IS THE RESULT OF ONE OF THE QUESTIONS ON OUR 1991 POLL:

> SHOULD LEGISLATION BE PASSED TO PROHIBIT THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION FROM IMPOSING ENVIRONMENTAL STANDARDS AND LIMITATIONS THAT ARE STRICTER THAN FEDERAL STANDARDS?
>
> 61.1% YES 33% NO 5.9% UNDECIDED

ATTACHED IS A COPY OF OUR LETTER TO REPRESENTATIVE MOYER OUTLINING OUR CONCERNS AND LANGUAGE SUGGESTIONS FOR THE BILL. BRIEFLY, THE AREAS THAT NEED TO BE AMENDED ARE:

- SECTIONS THAT GO BEYOND THE REQUIREMENTS OF THE CLEAN AIR ACT AMENDMENTS TO 1990. THE SECTIONS THAT GIVE THEM ADDITIONAL AUTHORITY TO: REGULATE MORE TYPES OF SOURCES; SET MORE STRINGENT EMISSION STANDARDS; REGULATE MORE KINDS OF AIR POLLUTANTS; AND, TO IMPOSE ADMINISTRATIVE PENALTIES.

- THE SECTION THAT GIVES THEM AUTHORITY TO SET A SHORTER TIME LIMIT THAN 12 MONTHS FOR APPLICATION DEADLINES; AND,

- THE LANGUAGE THAT SAYS THEY "MAY" EXEMPT A SOURCE WHEN THE FEDERAL ADMINISTRATOR HAS EXEMPTED A SOURCE.

FINALLY, THE LANGUAGE FOR THE FEE STRUCTURE NEEDS TO BE CLEARLY SPELLED OUT. HISTORICALLY, THE DEPARTMENT HAS BEEN REGULATING MOSTLY LARGE CORPORATIONS. BY THEIR OWN ESTIMATION, 600 SMALL BUSINESSES THAT HAVE NOT BEEN PREVIOUSLY REGULATED, SOON WILL

BE REGULATED. WHAT MAY SEEM LIKE A SMALL OR REASONABLE FEE TO THE PERSONNEL AT THE DEPARTMENT, OR A LARGE CORPORATION COULD BE VERY ONEROUS TO A SMALL BUSINESS OWNER. LANGUAGE NEEDS TO BE INCLUDED IN THE BILL THAT STATES:

> THE FEES ARE TO BE NO MORE THAN NECESSARY TO MEET THE FEDERAL REQUIREMENTS FOR FUNDING OF THE PROGRAM.

THANK YOU FOR THE OPPORTUNITY TO TESTIFY ON THIS VERY IMPORTANT BILL.

NFIB Alaska

National Federation of
Independent Business

March 16, 1992

The Honorable Tom Moyer
Alaska State House of Representatives
P.O. Box V
Juneau, Alaska 99811

RE: HB 377

Dear Representative Moyer:

On behalf of the 5292 members of NFIB/Alaska, I would like to express our appreciation for time and effort you have been devoting to the bill implementing the federal Clean Air Act Amendments of 1990.

The Department of Environmental Conservation has estimated this bill will effect 600 small businesses in Alaska that have not been previously regulated. There are several sections of HB 377 that are of particular concern to NFIB/Alaska because it gives the department additional authority not specifically required by the federal law. It gives them additional authority to: regulate more types of sources; set more stringent emission standards; regulate more kinds of air pollutants; and, to impose administrative penalties. NFIB/Alaska suggests that all sections giving them additional authority, beyond those prescribed in the federal standards, be deleted.

If required by the department, the bill allows them to set application deadlines earlier than 12 months. We suggest that the language giving them the authority to set shorter application deadlines be deleted.

When the federal administrator exempts a source, the bill allows the department to may(be) exempt the source. We suggest that the language giving them the authority to may(be) exempt the source be changed to require (shall) them to exempt the source.

State Office
9159 Skywood Lane
Juneau, AK 99801
(907) 789-4278

As you know, the legislative agenda of NFIB/Alaska is determined by our ballot. The ballot is our annual poll of our members on a series of issues deemed critical to small business. A majority vote sets our policy and position on legislative issues. The following is the result of one of the questions on our 1991 poll:

> Should legislation be passed to prohibit the Department of Environmental Conservation from imposing environmental standards and limitations that are stricter than federal standards?
>
> 61.1% Yes   33% No   5.9% Undecided

Also, caution needs to be exercised in drafting language for the fees in HB 377. Historically the Department of Environmental Conservation has been regulating mostly large corporations. By their own estimation, 600 small businesses that have not been previously regulated soon will be regulated. What may seem like a small or reasonable fee to the personnel at the department, or a large corporation could be very onerous to a small business owner. Language needs to be included in the bill that states: the fees are to be no more than absolutely necessary to meet the federal requirements for funding of the program.

Also, these fees are to be sufficient to cover the costs to develop and implement the program. The fees are not to significantly exceed the cost to develop and implement the program. The term "but not significantly exceed" is used twice on page 8, lines 3 and 25. What may be determined to "not significantly exceed" the costs to develop and implement the program by this administration may be viewed entirely differently by subsequent administrations. To help clarify this point, the language "do not significantly exceed" needs to be changed to "do not exceed" the cost.

From a "real world" perspective, the department has prepared some informational handouts but, this information is not very widely distributed to the public. Additionally, information on this issue is difficult to obtain from EPA. I have been calling the EPA Small Business Liaison person since early January attempting to obtain a copy of their booklet "A Guide for Small Business on the Clean Air Act Amendments of 1990." I recently received a note from EPA informing me the "publication is not expected until another month plus."

Hopefully since HB 377 contains the Small Business Assistance Program help for small businesses to comply with the law may be available. I recently sent a legislative update to our members and devoted 1/3 of it to this issue. To raise public awareness, it would be helpful if you or the department would hold a press briefing. Also, you and other legislators might want to consider including some information on this issue in your mailings to constituents.

I appreciate having the opportunity to share with you some of the concerns of the small business community. I look forward to working with you on this and other issues of importance to small business owners.

Sincerely,

Resa

Resa Jerrel
State Director

Fax Transmittal Cover Sheet

To: Rep. Terry Martin, - AK House-Rep. Martin

From: Rollo Pool, ALASKA PULP CORP.

Fax Number: (907) 747-2268

Date: Sat, Mar 28, 1992 • 5:09 PM

Transmitting (2) pages, including cover sheet.

If there is difficulty with this transmission, please call: (907) 747-2268

Note:
Duplicate sent to House Judiciary Committee fax today.

ALASKA PULP CORPORATION
4600 SAWMILL CREEK RD
SITKA, AK 99835

3/28/92

TO: HOUSE JUDICIARY, ATTN: MR. TERRY MARTIN
FROM: Rollo Pool, Alaska Pulp, 747-2283

CS-Resource
for HB 377

RE: INFORMATION REQUEST: CSS 377

On March 18, 1992, I was asked by the House Judiciary Committee to estimate the cost of the Clean Air Act (1990) to our company.

Our pulp mill in Sitka is looking at a new annual expense from around $50,000 to over $100,000 from this Act, depending on how some of the numbers and categories will be calculated and according to our current estimates.

Although not part of your request, I also want to add that the user-fee regulations now being circiculated by ADEC for permits, approvals and inspections are estimated to cost us an additional $150,000 per year. This is for one pulp mill (Sitka), one sawmill (Wrangell), two logging communities (Southeast Alaska) and includes fees for wastewater, hazardous waste, kitchens, air and other items.

TESTIMONY HB 377

Alaska Pulp Corporation, Sitka
Rollo Pool
March 18, 1992

House Judiciary Chairman and Committee:

Good afternoon. My name is Rollo Pool, and I am manager of public relations for the Alaska Pulp Corporation. We have manufacturing facilities in Sitka and Wrangell and manage two logging operations. We are the second largest private employer in Southeast Alaska.

We appreciate the opportunity to testify on this important bill.

The two main points that I wish to address today are consistency of regulations and cost.

I will address the latter first. One of the biggest hurdles we face as a company is keeping up with changing environmental regulations. It is extremely difficult for a business as complicated as ours to predict what the environmental climate will be –in terms of standards, technology and regulations – one, two or three years from now, and to predict with any certainty the cost of those regulations to our operations.

One thing that we don't feel that legislative bodies and government agencies factor into their regulatory changes is the impact of these costs – an industry's ability to pay for these items or the cost competitiveness of industries. Unfortunately, for us, the price our customers pay for our pulp and our lumber is not based on our internal costs for raw materials or on our manufacturing costs, which include the costs we bear from environmental regulation. The price we receive is formed by global patterns, such as the world supply and demand for these commodities. The world market, not Alaska Pulp, sets our selling prices.

Merely because we have another $1 of cost per ton does not mean that we can raise the price of our product by a similar amount. The cost of any new regulation will make our bottom line lower. At times like today, when markets are soft, that additional $1 per ton takes a toll. We feel it. We realize that costs, even environmental costs, are an inevitable part of doing business, but there is a point that costs drive a company out of the marketplace. I don't know if that point is with the Clean Air Act, in new water permits, national forest timber policies, or legislation that is being crafted as we speak.

There are very few guarantees in our business. One pulp mill in Washington is closing its doors for good at the end of March. Another pulp mill in that state is being considered for closure. These go along with two pulp mills from Finland and one each from Italy and Norway. They cite market conditions, regulations and the huge cost to upgrade and improve their environmental operations as reasons for closure.

Although the intentions of those tightening the laws, limits and controls of our businesses are well intentioned (cleaner air and water, less solid waste), there is little consideration for the cumulative effect that this and other bills have on industry and, more fundamentally, how they affect a company's ability to survive in uncaring world markets. When Alaskan laws are tougher than federal standards, it can and does create an unfair advantage for our industries to conduct business and to compete in world markets from this state. I might add that we compete with mills from many other countries that have far fewer environmental restrictions than we have in the United States.

The other issue that I wish to directly address today is one of consistency – consistency between federal and state regulations. An analogy to what we experience is comparable to having laws that force drivers to drive down the left side of road on federal highways and down the right side on state roads. The pattern sets us up for a collision.

Last summer, during a safety check of our chlorine handling equipment, we discharged a slight amount of chlorine into the atmosphere at one of our facilities. The release was measured in ounces, and much less than the amount that triggers automatic reporting of this chemical under SARA Title III regulations for local emergency planning committees. Nevertheless, we reported the incident to the US Coast Guard which considered it part of normal, safety-check operations. The check did, after all,, what it was designed to do. However, a local ADEC officials considered the incident large enough to issue us a warning on our reporting. We were told that any release of chlorine must be reported to ADEC, even 1 molecule, because that is the law. Obviously, there was a huge difference between state and federal regulators' impressions of this event. The state does not have *de minimus* standard for reporting of this and many other chemicals. We wish those standards or minimum reporting quantities were specified and were the same at both the state and federal levels, so that we can avoid reporting problems of minor releases.

We want one set of rules, one set of limits, one set of definitions.

A) CSS 377 EXCEEDS FEDERAL LAW

The bill, as it stands, it exceeds the federal requirements in many cases:

1) Allowing more sources and more pollutants to be regulated;
2) Allowing for more stringent air emission standards to be established;
3) Allowing for more stringent ambient air standards to be established.

B) ADMINISTRATIVE PENALTIES

Concerning administrative penalties, CS 377 goes beyond the intention of the federal law, allowing local ADEC officials to issue, essentially, $10,000 traffic tickets at their own discretion. This is really unnecessary, when the federal law allows for civil penalties of up to $100,000 for one violation and $10,000 per day thereafter, and allows also for criminal penalties. Unless there are very strict boundaries drawn clearly around this issue, it can become a very misused and abused tool by local enforcement officials. In the case of our chlorine release, we could have been given a $10,000 citation.

C) RISK ASSESSMENTS

This section permits the state to base its emission standards and limitation on risk assessments – or on available technology – rather than using federally specified standards and technology.

D) FUGITIVE EMISSIONS

We want to see the treatment of fugitive emissions consistent with federal definitions and requirements.

E) PERMIT REOPENERS

The Clean Air Act allows for reopening permits in certain cases. The state's bill takes this even further, authorizing reopening even when the new standard does not take effect until after the permit expires. This is a great example of overkill. Presently, we are operating under air permits that are good for only one year. We would like to see that period increased to five years, keeping the same reopener clauses as exist in federal law.

F) EXEMPTION OF SOURCES WHICH EPA EXEMPTS

We feel the bill should require the State to adopt federal exemptions.

G) PERMIT FEES

Fees should be limited to the limits set by federal law and should not exceed the direct costs of implementing federally-required regulations.

Our people are concerned that Alaska's Clean Air Bill should be consistent with and not exceed federal limits. We want one set of rules. Thank you for allowing us the opportunity to testify.

Municipality of Anchorage

P.O. BOX 196650
ANCHORAGE, ALASKA 99519-6650
(907) 343-4311

ANCHORAGE ASSEMBLY

March 24, 1992

Members of the Anchorage Caucus
House Judiciary Committee
P. O. Box V
Juneau, Alaska 99811

Dear Anchorage Legislators:

We members of the Anchorage Assembly are asking for your support of amendments to HB 377 addressing two major problems: urban visibility and hydrocarbon pollution. We want State Clean Air Act requirements to be shaped to Alaska's northern conditions to protect the health of our citizens and the quality of our lives.

We are concerned about the urban haze that surrounds Anchorage when the air is calm, especially in the winter. Alaska's clear, blue skies and distant views are special, and should be saved for those who live here, and those who visit us.

Persons with lung conditions contact us saying that polluted air during haze events makes breathing difficult and threatens their health.

In addition, we share the concerns of the residents of Government Hill about hydrocarbons in the air from the nearby tank farm. Besides causing acute problems with burning eyes and throats, the hydrocarbons are known carcinogens, and must be controlled in an urban setting.

We are concerned that hydrocarbon pollution may also be a threat to citizens as they drive their cars in our cold temperatures, and in neighborhoods near busy roads.

Proposed amendments establish systems for both the haze and hydrocarbons, and require reports to the Legislature to determine the major components and sources of the haze and hydrocarbon pollution; assess health, safety and environmental effects; and develop program alternatives to prevent, abate and control haze and hydrocarbon pollution.

Members of the Anchorage Caucus
March 24, 1992
Page 2

We hope you will help us clean Anchorage's air and protect the health of our citizens by supporting these amendments.

Sincerely,

Craig Campbell
Chair

Pat Abney
Assemblymember

Dick Traini
Assemblyman

Chuck Landers
Assemblyman

Bill Faulkner
Assemblyman

Jim Barnett
Assemblyman

Heather Flynn
Assemblymember

Mark Begich
Assemblyman

egj/DOCD/PA02