

**ALASKA**

**LEGISLATURE**

**COMMITTEE**

**FILES**

**1991-1992**

**8672**

**7167**

**HOUSE**

**RESOURCES**

# Rural Alaska Community Action Program, Inc.

March 2, 1992

Representative Cliff Davidson  
P.O. Box V  
Juneau, AK 99811

Dear Representative Davidson:

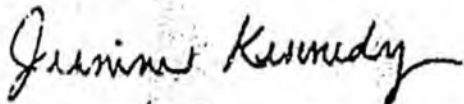
We are an organization with over 26 years of experience working with rural villages, with one area of particular concern being the protection of the subsistence lifestyle and culture. Critical to the future viability of subsistence is the condition of fish-bearing streams and rivers.

This is why we are pleased to see that you have introduced legislation (HB 355) which would guarantee sufficient water is left in-stream for fish habitat when water uses are considered on a case-by-case basis.

Enactment of this legislation would not only insure sufficient water remains in-stream for fish, but also would benefit other uses of water such as navigation, water quality and public recreation, all important to rural Alaska.

Our Board of Directors has, over the past two-and-a-half decades, consistently supported and advocated for the protection of our water resources for the long-term benefit of rural Alaskans. We appreciate your efforts to protect our fisheries and water quality.

Sincerely,



Jeanine Kennedy, Executive Director  
Rural Alaska Community Action Program, Inc.

JK:ct



Alaska Environmental Lobby, Inc.

P.O. Box 22151 Juneau, Alaska 99802

907-463-3166



## Alaska Sportfishing Association

3605 Arctic Blvd., Suite 800 • Anchorage, Alaska 99503



*America's Leading Coldwater Fisheries Conservation Organization*

Washington, D.C. Headquarters: 501 Church Street, Northeast • Vienna, Virginia 22180 • 703-281-1100

March 4, 1992

Commissioner Carl Rosier  
Alaska Department of Fish and Game  
P. O. Box 25526  
Juneau, Alaska 99802-5526

Dear Commissioner Rosier:

We are deeply disappointed with your letter of January 22, 1992 to Representative Davidson stating that the Alaska Department of Fish and Game does not support House Bill 355, "An Act relating to the reservation of instream flows for fish and wildlife."

House Bill 355 would guarantee an immediate and legal right to the water that fish and wildlife use for survival. Under current law, there is no such guarantee.

ADF&G is charged with the statutory mandate to manage, protect and improve the fish and game resources in the interest of the economy and well-being of the state. But, ironically, ADF&G finds it unnecessary to guarantee water for fish and wildlife survival. The rationale that HB 355 is not necessary because Alaska's current instream flow laws are "adequate" and already among the most "progressive in the nation" is simply not a valid comparison and must be put into context. Alaska is in a fortuitous position to plan ahead for our water resources.

Most western states have made a disaster of their fisheries resources. Their instream flow laws were only recently enacted, more than a century after granting out-of-stream water rights that destroyed fish habitat. Although western states laws now provide a mechanism to retroactively restore sufficient flows for fish and wildlife, they are only accomplished at

great expense, controversy and effort. As a young state, Alaska's instream flow laws are progressive only because other western states water laws are reactionary to more than a decade of water mismanagement.

Article VIII, Section 13 of the Alaska Constitution mandates a general reservation of water for fish and wildlife. Unlike other western states, Alaska's Constitution recognizes that fish and wildlife values are indispensable to the state's health, welfare and economy. This is unique among state Constitutions. The question is not whether Alaska's water management laws are the most progressive among western states, but whether current laws meet Alaska's constitutional mandate and will protect fisheries from water conflicts in the future. Presently, it does not.

Current law only provides a mechanism to reserve instream flows for fish and wildlife. It does not provide a guarantee that water will be reserved for this purpose. Please note the Commissioner of the Department of Natural Resources must only "consider" the effect of proposed out-of-stream appropriations of water on fish and wildlife. Contrary to your position, we find current law inadequate and we are disturbed at your agency's weak position to protect the fish and game resources so vital to the people of Alaska.

Considering that water policy issues are continually evolving in the Legislature, we hope your Department will have the opportunity to reconsider your existing position on House Bill 355.

Sincerely,

*Marna Schwartz*

Marna Schwartz  
Executive Director, Alaska Environmental Lobby

*Doug Ogden/DO*

Doug Ogden  
President, Alaska Sportfishing Association

Jack Willis by JP  
Trout Unlimited

cc: House Resources Committee  
Senate Resources Committee

# KODIAK REGIONAL AQUACULTURE ASSOCIATION

BOX 3407 KODIAK, ALASKA 99615

(907) 488-6555



March 5, 1992

Representative Cliff Davidson  
Alaska State Legislature, House Dist. 27  
Box v  
Juneau, AK 99811

Dear Cliff:

In reference to the legislation you have introduced this session which deals with appropriations for restoration projects relating to the Exxon Valdez Oil Spill, namely HB 411, the Kodiak Regional Aquaculture Association (KRAA) strongly supports the provisions of that bill.

Our association has often expressed support of habitat protection efforts, especially for those where both natural and artificial salmon populations are critically associated with that habitat. Of special appeal to KRAA is that portion of HB 411 which would provide an appropriation for the acquisition of portions of Afognak Island from 'willing sellers of land surrounding the Paul's Lake and Malina Lake systems.' Since the mission of our association is to help stabilize salmon production in the Kodiak area for the benefit of all user groups, we are very cognizant of how extremely important the retention of pristine habitat is for successful and sustainable fish production. The provisions of HB 411 which would provide for such habitat preservation through acquisition represent a tangible legacy which will benefit all users of Kodiak salmon resources. These provisions also represent a very positive initiative towards ameliorating the adverse impacts to salmon habitat associated with the 1989 Exxon Valdez oil spill.

Our association has recognized that the Paul's and Malina Lake systems are major salmon producers on Afognak Island. Each system supports significant sockeye and coho populations and Malina has a very productive pink salmon population. Each system experiences heavy use by all of our area's fisheries groups, namely subsistence, commercial, recreational sport and commercial sportfish operators. This level of use is further magnified by the heavy use of hunters, photographers, kayakers, etc.

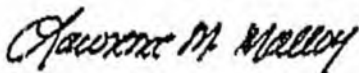
Recently, concern has been developing regarding the currently diminished stock status of sockeye salmon populations in each of these systems. Consequently, KRAA, in conjunction with the Department of Fish and Game, has targeted sockeye rehabilitation efforts on these two systems whereby 1992 represents the fourth year of at least a nine year rebuilding program for these two sockeye stocks. KRAA's funding of these efforts reflects the recognition and importance that Kodiak's commercial salmon fishermen attach to these two systems. HB 411 compliments that recognition by identifying habitat which we feel is necessary for achieving maximum salmon production from these systems. Again, KRAA strongly supports the proposed appropriations for habitat acquisition identified in this bill.

Rep. Cliff Davidson

Page 2

Another portion of HB 411 which appeals to KRAA, and hopefully to all fisheries resource users who appreciate the importance and significance of environmental and resource monitoring in developing base line data, is Section 5 of the bill which would appropriate funding to the Department of Fish and Game for such activities. Our recommendations center on ADF&G's proposed acquisition in the Kodiak area of relatively small parcels of land associated with existing fish weir and research sites and the hatchery site on Afognak Island. All of these facilities represent the key to preserving the health of our areas heavily sought after salmon resources. These facilities function perfectly and critically as environmental monitoring and research sites. Currently many of these sites have annual leasing arrangement from private land owners. As state budgets trend downward and annual leasing fees increase, several of these sites will be in jeopardy. This would be a quantum leap backward in caretaking these heavily used resources. Since the Kodiak area appears to not have fared that well with the Trustee Council appropriations to proposed restoration and mitigation projects, we would recommend that a significant portion of the funding associated with Section 5 of HB 411 be considered for ADF&G's small parcel land acquisition proposal.

Sincerely,



Lawrence M. Malloy  
Executive Director

cc: Senator Fred Zharoff

HB

358

**FISCAL NOTE**

**STATE OF ALASKA**  
**1992 LEGISLATIVE SESSION**

**BILL NO. CSHB358**

Revision Date: "WORK DRAFT"  
 Title: Alaska Seafood Marketing Institute

Department Affected: UNIVERSITY OF ALASKA  
 BRU: Public Service  
 Component: School of Fisheries

Sponsor: Rep Kubina  
 Requestor: Rep C. Davidson

Component Serial No: 1566

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

OPERATING	FY93	FY94	FY95	FY96	FY97	FY98
PERSONAL SERVICES	96.0	99.0	104.0	109.0	114.0	120.0
TRAVEL	27.0	29.0	30.0	30.0	32.0	32.0
CONTRACTUAL	23.0	23.0	24.0	24.0	25.0	25.0
SUPPLIES	5.0	5.0	6.0	6.0	7.0	7.0
EQUIPMENT	9.0			2.0	2.0	2.0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>160.0</b>	<b>156.0</b>	<b>164.0</b>	<b>171.0</b>	<b>180.0</b>	<b>186.0</b>
<b>CAPITAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>REVENUE FD SOURCE</b>						

**FUNDING: (Thousands of Dollars)**

GENERAL FUND	160.0	156.0	164.0	171.0	180.0	186.0
FEDERAL FUNDS						
OTHER FUNDS						
<b>TOTAL</b>	<b>160.0</b>	<b>156.0</b>	<b>164.0</b>	<b>171.0</b>	<b>180.0</b>	<b>186.0</b>

**POSITIONS:**

FULL-TIME	2	2	2	2	2	2
PART-TIME						
TEMPORARY						

Estimate of current year impact:           -0-          

ANALYSIS (Attach additional pages as necessary)

See Page 2 of 2

Prepared by: Marsha Hubbard, Director  
 Division: Statewide Budget Office

Phone: 474-7593  
 Date: 2/28/92

Approved by: Brian Rogers, Vice President for Finance  
 Agency: University of Alaska

Date: 2/28/92

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

# Alaska State Legislature



Chairman  
State Affairs  
Committee  

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Legislative Council  

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Transportation  
Committee

During Session:  
State Capitol  
P O. Box V  
Juneau, Alaska 99811  
(907) 465-4859

During Interim:  
P O. Box 2463  
Valdez, Alaska 99686  
(907) 835-2111

Representative Eugene Kubina

## SPONSOR STATEMENT

The current state of the Alaska seafood industry was accurately described in a United States General Accounting Office report on seafood marketing (October 1986). This report included the following comments:

"The U.S. seafood industry is independent and fragmented in nature. [It] . . . consists of many small independent fishermen who often do not share supply, demand, and price information.

"This organizational structure represents a major impediment to effective marketing of seafood products in domestic and export markets."

CS for HB 358, in keeping with the recommendations of the Salmon Strategy Task Force, would expand the program of the University of Alaska Marine Advisory Program to emphasize salmon product and market development. This program expansion would consist of the following:

- A. Add a Seafood Marketing Specialist to the staff of the Marine Advisory Program.
- B. Under the guidance of the Marine Advisory Program, see the development of the Alaska State Salmon Marketing Association.<sup>1</sup> This association would work to assist fishermen and their marketing organizations to
  1. promote the gathering and exchange of market and price information among the members.
  2. provide basic market research on consumer needs, trends and preferences.

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<sup>1</sup> The Marine Advisory Program has had experience in forming such associations. For instance, beginning with groundwork started in 1989, the Marine Advisory Program helped form the Alaska Marine Safety Educational Association--which is currently for nonprofit status.

— DISTRICT SIX —

• Chenega Bay • Chitina • Cooper Landing • Cordova • Hope • Moose Pass • Seward • Tatitlek • Valdez • Whittier •

# **CORRECTION**

**THIS DOCUMENT  
HAS BEEN REPHOTOGRAPHED  
TO ASSURE LEGIBILITY**

**FISCAL NOTE**

**STATE OF ALASKA**  
**1992 LEGISLATIVE SESSION**

**BILL NO. CSHB358**

Revision Date: "WORK DRAFT"  
 Title: Alaska Seafood Marketing Institute

Department Affected: UNIVERSITY OF ALASKA  
 BRU: Public Service  
 Component: School of Fisheries

Sponsor: Rep Kubina  
 Requestor: Rep C. Davidson

Component Serial No: 1566

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

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**FISCAL NOTE**

CSHB358 (work draft)

Page 2 of 2

Regarding Section 1.(1) "conduct, or contract for, seafood marketing research;" , the university assumes that the costs for these efforts will be independently funded according to the budget requirements of each proposal.

Regarding Section 1.(3)(G) "sponsor an annual statewide conference on salmon marketing and vary the location of the conference among the regions of the state;" , the amount proposed for travel provides for only those costs associated with program staff and invited speakers attendance. It is assumed that all other participants will cover their own travel needs.

Regarding Section 1.(4) " ..establish a salmon marketing advisory council.." the amount proposed for travel includes funding for 10 council members and program staff to attend one annual meeting.

Object Code Expenditure descriptions are as follows:

**Personal Services**

- 65,000 - Onu FTE Associate Professor
- 31,000 - One FTE Administrative Assistant

**Travel**

- 18,000 - Annual Advisory Council meeting
- 4,000 - Staff attendance @ Statewide conferences
- 5,000 - On-going program staff site visitations

**Contractual**

- 11,000 - Annual report preparation
- 8,000 - Conference facilities
- 6,000 - Communications, postage, copying, etc.

**Office Supplies and Materials**

- 5,000 - Office supplies and materials

**Equipment**

- 6,000 - Computer, software, printer, etc.
- 3,000 - Office furniture

# Alaska State Legislature



Representative Eugene Kubina

During Session:  
State Capitol  
P.O. Box V  
Juneau, Alaska 99811  
(907) 465-4859

During Interim:  
P.O. Box 2463  
Valdez, Alaska 99686  
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Chairman  
State Affairs  
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## SPONSOR STATEMENT

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"The U.S. seafood industry is independent and fragmented in nature. [It] . . . consists of many small independent fishermen who often do not share supply, demand, and price information.

"This organizational structure represents a major impediment to effective marketing of seafood products in domestic and export markets."

CS for HB 352, in keeping with the recommendations of the Salmon Strategy Task Force, would expand the program of the University of Alaska Marine Advisory Program to emphasize salmon product and market development. This program expansion would consist of the following:

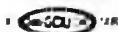
- A. Add a Seafood Marketing Specialist to the staff of the Marine Advisory Program.
- B. Under the guidance of the Marine Advisory Program, see the development of the Alaska State Salmon Marketing Association.<sup>1</sup> This association would work to assist fishermen and their marketing organizations to
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  2. provide basic market research on consumer needs, trends and preferences.

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<sup>1</sup> The Marine Advisory Program has had experience in forming such associations. For instance, beginning with groundwork started in 1989, the Marine Advisory Program helped form the Alaska Marine Safety Educational Association--which is currently for nonprofit status.

— DISTRICT SIX —

• Chenega Bay • Chitina • Cooper Landing • Cordova • Hope • Moose Pass • Seward • Tatitlek • Valdez • Whittier •



3. identify educational and information needs necessary to produce superior salmon products.
  4. assist fishermen in their efforts to effectively operate regional marketing associations, including day to day operations, marketing strategies, and cooperation with state and federal agencies.
  5. provide fishermen and their marketing organizations with a unified forum for making recommendations on policy to state government.
- C. With the assistance of the Marine Advisory Program, the fishermen of our various districts would form a Marketing Program Advisory Council to help define program needs for their regions.

CS for HB 358 would also see a change in the Board of Directors of the Alaska State Marketing Institute. The current five positions dedicated to members engaged in fishing would be changed to nine; the current twelve positions dedicated to members engaged in seafood processing would be changed to eight.

CS FOR HOUSE BILL NO. 358 (L&C)  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Offered: 2/14/92

Referred: Resources, Finance

Sponsor(s): REPRESENTATIVE KUBINA

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to a statewide salmon marketing association and to a seafood marketing  
2 educational program; and providing for an effective date."

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

4 \* Section 1. AS 14.40 is amended by adding a new section to read:

5 Sec. 14.40.083. ESTABLISHMENT OF SEAFOOD MARKETING EDUCATIONAL  
6 PROGRAM. (a) The University of Alaska shall establish a seafood marketing educational  
7 program within the marine advisory program. The seafood marketing educational program shall

8 (1) develop and collect seafood marketing information;

9 (2) assist in identifying needed seafood marketing research and the appropriate  
10 institution or agency to conduct the research;

11 (3) assist in the organization of a statewide salmon marketing association, as a  
12 nonprofit corporation, to

13 (A) provide training and education in the organization, operation, and  
14 management of salmon marketing organizations;

1 (B) provide leadership training to members of salmon marketing  
2 organizations;

3 (C) distribute information on salmon market trends;

4 (D) promote development of salmon products;

5 (E) make recommendations to state, federal, and other organizations  
6 regarding the marketing of and markets for salmon;

7 (F) provide information and reviews on financial, legal, and other issues  
8 relevant to salmon marketing organizations;

9 (G) sponsor an annual statewide conference on salmon marketing and vary  
10 the location of the conference among the regions of the state;

11 (4) establish a salmon marketing education advisory council consisting of a cross  
12 section of members of the statewide salmon marketing association to provide guidance,  
13 assistance, and advice to the seafood marketing educational program regarding its annual program  
14 of services.

15 (b) The administration of the seafood marketing educational program is under a  
16 university employee designated as a seafood marketing specialist.

17 \* Sec. 2. This Act takes effect immediately under AS 01.10.070(c).

# **Salmon Strategy Task Force Recommendations**



**Walter J. Hickel, Governor  
Commissioner Glenn A. Olds, Chair**

**State of Alaska  
Department of Commerce and  
Economic Development  
Division of Economic Development**

**JANUARY 24, 1992**

## RECOMMENDATIONS FOR DEALING WITH THE IMMEDIATE CRISIS

1. The Alaska Seafood Marketing Institute (ASMI) should develop a budget for immediate funding to deal with the existing inventory surplus before the 1992 season and projected 1992 production. This must be implemented as soon as possible<sup>1</sup>.
2. Processors and fishermen should initiate market discussions early. The Task Force recognizes that the market situation will be uncertain at that time, and that the risk involved will lead to low price suggestions from processors, but recommends early discussions to provide maximum information sharing and opportunity to reach agreement. The Department of Labor (DOL) should be prepared to bring in knowledgeable mediators if necessary.
3. The University of Alaska (U. of A), Commerce and Economic Development (DCED), and Fish and Game (ADF&G), should initiate and/or support efforts to expose the broadest possible range of Alaska fishermen to credible and detailed information about recent and ongoing changes, including problems and opportunities, in the world markets for salmon.<sup>2</sup>
4. The DCED Division of Economic Development should review the processing capacity situation in Prince William Sound, taking into account the outcome of the 1991 season, and make preliminary findings available to the Governor (and the industry) as early as is practicable. The Task Force recognizes that the capacity problems that developed in Prince William Sound were the result of the fishery being late and very concentrated, and the fish being relatively dark and small.<sup>4</sup>
5. The DCED Division of Investments and Alaska Commercial Fishing and Agriculture Bank (CFAB) recognize the crisis caused by low prices and the effect this has on loan payments. The Task Force encourages them to actively seek out fishermen having problems and work with them on loan extensions and other measures to minimize foreclosures.<sup>5</sup>

- 
1. The immediate ASMI program should be geared to long-term domestic market growth. The Governor could include this amount in his budget request, including a request for exemption from procurement codes for this emergency funding. The Legislature could pass this supplemental funding out as soon as possible in the session. ASMI could reprogram funds to initiate the campaign as soon as possible, prior to release of the funds, consistent with prudent financial management.
  3. Provide reasonably detailed but clearly written information on prices and markets for salmon for widespread distribution in the spring of 1992 and thereafter. The information could be updated in season. A goal should be to establish a clearer understanding of the effects of market conditions and dynamics on prices.
  4. DCED could prepare a supplemental budget to cover the costs of doing the necessary surveys for the PWS capacity determination.
  5. Reinstatement of state funding for the ABDC (Alaska Business Development Centers) program of outreach and business assistance in rural areas has been identified as an important component in dealing with financial hardship. This organization provides one-on-one assistance with loan workouts and dealing with the IRS that is not available elsewhere.

## MID-RANGE RECOMMENDATIONS

### General

1. The DCED, ADF&G, and Department of Labor (DOL) should consider promoting a closer and more trusting relationship among the interests involved in the issues concerning Alaska's salmon industry. This effort should be closely coordinated with other ongoing educational and consensus building efforts.<sup>1</sup>

### Product and Market Development

2. The Alaska Science and Technology Foundation (in fisheries area), and the U of A's Fisheries Industrial Technology Center, and Marine Advisory Program should be encouraged to expand their efforts in salmon product and market development and to coordinate their efforts in providing technical assistance and research and development in salmon products through the Alaska Fisheries Development Foundation (AFDF).<sup>2</sup>
3. The DCED's ability to provide international marketing information and sales assistance should be expanded. The Department's Division of Economic Development and Office of International Trade should work closely with ASMI and the Alaska Center for International Business (ACIB) to reduce risk and costs to the private sector.<sup>3</sup>
4. The DCED, ASMI and the Marine Advisory Program's ability to assist domestic marketing should be expanded. The Department's Division of Economic Development work closely with ASMI to reduce risk and costs to the private sector.<sup>4</sup>

- 
1. In the consensus building efforts, the agencies could organize forums and/or participate in existing trade shows and conferences. The issues examined by the Salmon Strategy Task Force could be presented and discussed with the objective of developing a consensus about the direction the state should take in the future regarding the harvesting, management, promotion and marketing of Alaska's salmon.
  2. AFDF has in place a proven industry board and ability to perform, but will require administrative funding to continue operations. Salmon industry representation on their board should be expanded.
  3. Specific projects could include:
    - Work to reduce tariff barriers for Alaska seafood products overseas.
    - Encouragement to foreign reprocessors to purchase or joint venture value-added production in Alaska.
    - Continuing investigation of new markets for salmon overseas where disposable income is high enough, and seafood is commonly eaten.
  4. These entities could reduce risk and costs to the private sector of expanding domestic markets through:
    - Working with food service entities in Alaska and other states to promote sales and distribution of Alaska salmon products.
    - Providing start-up technical assistance to new ventures.

## Quality

5. The Department of Fish and Game should reexamine management practices with the goal of obtaining the highest quality pack possible without harming the stocks.<sup>5</sup>
6. The Department of Fish and Game should conduct a comprehensive study in Southeast Alaska and Prince William Sound, with the cooperation of fishermen and processors, to determine the degree of risk managers should take in managing for economic efficiency and fish quality. The goal would be to identify the optimum locations for harvest.<sup>6</sup>
7. Industry and the Department of Fish and Game should cooperate on a program to educate fisheries managers, fishermen and industry operators on the physiological changes that occur in salmon (and hence its marketability) to encourage management that provides for the optimum use of the resource.<sup>7</sup>
8. Hatcheries should conduct research to determine the cause for variations in sexual maturity and other quality factors for stocks returning to hatcheries. Based on the research, hatcheries should modify their stocks and practices to optimize quality.

## Marketing and ASMI's Role

9. ASMI, the FITC and the Marine Advisory Program (U of A) should expand educational programs on fish handling, cleaning, chilling, and processing for virtually all parts of the industry. Such efforts should focus on providing hands-on training from the fishing boat to the market, and on meeting the needs of the consumer for quality seafood. The effects of quality handling on the ability to market the end product should be emphasized.

- 
5. The reexamination of management practices could include changes in the length of openings and the timing of fisheries to optimize salmon quality. The Task Force recognizes that Fish and Game may need statutory and regulatory changes to incorporate such considerations in management decisions.
  6. A controlled set of experiments to determine the optimum points of harvest for top quality could include:
    - a. testing the condition of fish to determine rates of deterioration in terminal harvest and outer areas, throughout the duration of the run; and
    - b. identifying the optimum location which will provide the highest quality of salmon with an acceptable risk to the wild stocks.
  7. A study to examine the effects of sexual maturity on finished product quality could include the following:
    - a. samples in each of the categories in ASMI's Color Guide and hatchery broodstock would be collected;
    - b. portions of each category would be processed at least as headed and gutted, filleted and canned products; and
    - c. the end products would then be used in a workshop setting to educate managers on the various aspects of salmon quality.

The Task Force recognizes that a similar program budgeted at \$25,000 was considered and set aside by the ASMI board, and that it may be possible to achieve the same ends using commercially-processed products. ADF&G should prepare a budget item if necessary.

HB

369

# DIVISION OF LEGAL SERVICES

## LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

P.O. Box Y, Juneau, Alaska 99811  
(907) 465-3867 or 465-2450  
FAX (907) 465-2029

Deliveries to: 240 Main Street  
Court Plaza, Room 500  
Mail Stop 3101

### MEMORANDUM

September 25, 1991

**SUBJECT:** Issues Relating to Commercial Fishermen (Work Order No. 7LS-1493)

**TO:** Representative George Jacko, Jr.

**FROM:** George Utermohle  
Legislative Counsel

IS IT POSSIBLE UNDER ALASKA LAW TO MANDATE THAT FISH PROCESSORS PRESENT COMMERCIAL FISHERMEN WITH A PROJECTED FINAL PRICE FOR THEIR CATCH AT LEAST 120 DAYS BEFORE THE START OF THE FISHING SEASON?

The answer is yes. The authority to mandate the fixing of projected final prices well in advance of the fishing season is a function of the state's authority to regulate trade and commerce in the state. The authority to regulate trade and commerce arises from the state's police power to provide for the public health, safety, and welfare. The legislature may exercise the police powers of the state by virtue of the constitutional grant of the law making power to the legislature. Constitution of the State of Alaska, Article II, sec. 1. The legislature also has the power to regulate trade and commerce in fish caught in the state under article VIII, sec. 2 of the Alaska

Constitution which mandates that the legislature shall provide for the utilization and development of all natural resources, including fish, belonging to the state.

Current state law already authorizes the Department of Labor to mediate price disputes between fishermen and fish buyers, if a price agreement is not reached within 120 days before the fishing season begins. AS 16.10.280.

IS IT LEGAL FOR A FISH BUYER TO PAY A MINIMUM PRICE TO FISHERMEN UPON DELIVERY OF FISH, BUT THEN PAY THE FULL PRICE FOR THE FISH AT SOME LATER TIME AFTER THE FISH BUYER HAS SOLD THE PROCESSED PRODUCT?

Representative George Jacko, Jr.  
September 25, 1991  
Page 2

The answer is yes. The price received by fishermen for their catch, and the manner in which that price is determined and paid, is a matter of negotiation between the fishermen and the fish buyer. State law does not regulate the transaction between the fishermen and the fish buyer, except to require that fish be sold on the basis of weight. AS 16.10.270 and AS 45.75.240. The practice of delaying or deferring full payment for fish sold to a fish buyer is acknowledged and tacitly sanctioned by statutes relating to the processors' assessment for the support of the Alaska Seafood Marketing Institute (AS 16.51), the fishery business tax (AS 43.75), and the salmon enhancement tax (AS 43.76).

A fisherman is free to negotiate the price of fish that he sells, the manner in which the price is determined, and the manner in which payment is to be made with the fish buyer. If a fisherman does not like the price or other terms of the sale offered by a particular fish buyer, the fisherman may negotiate to sell his catch to another buyer or even process the fish himself. Unless the relative bargaining power of the two parties to the transaction are so disproportionate as to be monopolistic or a restraint of free markets, the state will not interject itself into the transaction.

If I may be of further assistance, please advise.

GU:gc  
91-335.glc

# House of Representatives

While in Session:

Box V

Juneau, AK 99811

(907)465-4942

P.O. Box 47001

Pedro Bay, Alaska 99647

(907)850-2208

Interim: (907)561-6154

January 21, 1992



Rep. George Jacko, Jr.

Member:

Finance Committee

Finance

Subcommittee Chair:

Courts

Department of Public Safety

Finance

Subcommittee Member:

Department of Fish and Game

Mr. Fritz Johnson

Editor

Bristol Bay Times

Dillingham, AK 99576

Dear Editor:

Last fall, after numerous conversations with fishermen throughout the summer, and considerable thought about the future of the fishing industry, I decided to introduce House Bill 369 requiring fishbuyers to propose a base price 120 days in advance of a salmon season. I'd like to take a few moments and explain why.

I hope the legislation will accomplish two objectives. First, I want to encourage serious price discussions between processors and fishermen to begin earlier in the year -- before the first fish swim up the river. Secondly, I would like this issue to come before the legislature to give it the consideration it deserves.

To my knowledge, this issue of preseason prices has never been seriously debated outside of the ad hoc fishing meetings during the summer boycotts. After what happened last summer -- in virtually every salmon fishery statewide -- fishermen gave notice that they are tired of being kept in the dark.

Let me emphasize at this point the bill is merely a working document. The 120 day period is flexible, and I anticipate it may change as the bill goes through the legislative process. I based the 120 day period in HB 369 on current state law requiring the Department of Labor to intervene between the negotiators if a price dispute involving a third of the fishermen, exists 120 days prior to a season.

Another important point is that the bill does not prohibit fishbuyers from adjusting the price upwards before or during a season. Some fishermen have voiced their concern with this.

Page Two

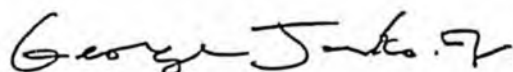
I agree that we need to change the traditional method of disseminating pricing information to fishermen. We cannot allow the "open ticket" pricing policy to continue. With global competition and changing consumer demands, the seafood industry is rapidly changing. To meet the challenges that lie before us, we are going to have to work together to maintain and develop our markets.

This means improving the relationship between harvesters and buyers in the fishing industry. More specifically, a dialogue needs to be established before the beginning of the season.

In order for HB 369 to be approved by the legislature, all sectors of the fishing industry must be involved. As we prepare for committee hearings, I would like cooperation and input from all members of the fishing industry.

This issue of preseason prices has been around since the early days of the salmon industry -- since the sail boats ruled the waters. I think HB 369 will bring attention to a matter that has been long ignored. I would encourage you to contact me if you have any comments or suggestions at 465-4942.

Sincerely,



Representative George Jacko, Jr.

GJ/be

# Jacko bill would require early salmon price posting

by Jim Paulin  
BayTimes Staff

**BRISTOL BAY** — Salmon prices posted in March, about the time of Dillingham's Beaver Round-Up? That's the scenario if a bill calling for mandatory early salmon price posting is approved by the state legislature.

Rep. George Jacko Jr. (D-Pedro Bay) is proposing legislation requiring fish buyers to publish a base price for salmon at least 120 days before the start of the fishing season. The legislation would also require prices to be included on fish tickets and posted on fish-buying vessels.

Industry reaction to Jacko's proposal was mixed.

Mitch Kink, Alaska Independent Fishermens Marketing Association official, said his organization supports the bill.

"It would fit the legislation that's there now," Kink said, pointing to a law on the books allowing for state mediation if a price isn't posted within 120 days of the start of the salmon season.

Former state Rep. Joe McGill of Dillingham said he sponsored the law allowing for mediation, but said he can't remember it ever being used. McGill said he supports Jacko's proposal, but questioned its effectiveness.

"All (processors) have got to do is say 'we've got a posted price,' and it won't have much effect," McGill said. Fishermen will still need to fight for a decent price, McGill said.

A Jacko press release announcing his bill said, in part: "This past summer we saw fishermen actively organizing for higher prices — in part because information was not available. I think the time has arrived to review the traditional method of disseminating marketing information to fishermen."

"Hopefully this will act as a vehicle to promote meaningful dialogue to improve communication of marketing information.

As a fisherman myself, I've witnessed firsthand the frustration and misperceptions involved."

Bristol Bay Driftnetters Association Executive Director Dean Paddock, of Juneau, was unimpressed with Jacko's proposal.

"Nobody knows what the price is going to be that far in advance," Paddock said.

"It would force the industry to post an artificially low price to cover itself," Anchorage resident and Bay salmon fisherman Trefon Angason. The bill's chances of becoming law are extremely slim, he added.

Norman Van Vactor, Peter Pan Seafoods' Dillingham plant manager, said "I don't see how you're going to put government in a position of legislating something like that."

Van Vactor also recalled Peter Pan fishermen negotiating preseason prices, only to see prices rise during the season.

"When prices fluctuated in season, they were the ones who lost out. The guys that negotiated the preseason price got the lowest price," he said.

Van Vactor said he's sent fishermen two newsletters describing market conditions.

Van Vactor said his "gut feeling" is for higher salmon prices this year. "Hopefully we hit the bottom of the barrel last season," he said.

RECEIVED MAR 23 1992  
House of Representatives

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(907)850-2208

Interim Office: 561-6154



Member  
Finance Committee  
  
Finance  
Subcommittee Chair:  
Courts  
Department of Public Safety  
Finance  
Subcommittee Member:  
Department of Fish and Game

Rep. George Jacko, Jr.

TO: Representative <sup>Cliff</sup> Davidson, Chairman  
House Resources Committee  
  
FROM: Representative <sup>Jacko</sup> Jacko, Jr.  
  
DATE: March 20, 1992  
  
SUBJ: HB 369 - posting of salmon prices.

=====  
Thank you for taking the time to schedule HB 369 for another hearing in the House Resources Committee. HB 369 requires fishbuyers to propose a price in advance of a salmon season. I am offering a committee substitute with several changes, primarily, reducing the preseason period from 120 days to 60 days.

I am hoping HB 369 accomplishes two objectives. First, to encourage price discussions between fishermen and processors earlier in the year -- before the first fish swim up the rivers. Secondly, to bring this issue before the legislature and give it the profile it deserves.

As world supplies of salmon continue to increase, so will the challenges that confront the many Alaskans who depend on fishing for their livelihood. A great deal of time and energy will be required to address these emerging issues.

However, we cannot forget the message that fishermen sent last summer. Through virtually every salmon fishery statewide, they said loud and clear, that improving preseason dialogue with fishbuyers was a priority.

As the many components of the industry undergo examination, this factor should not be overlooked. In response, I have introduced HB 369 asking processors to present to fishermen some measure of current market conditions -- in the form of a proposed price before the season starts.

Please let me know if I can provide further information.

# Editorial

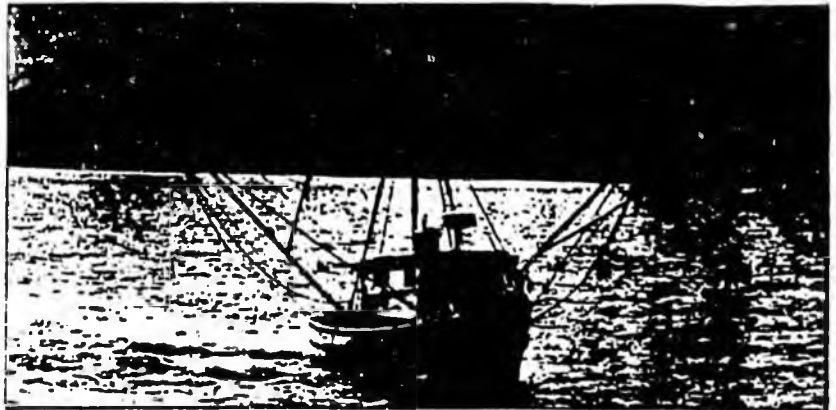
## New business legislation

Dave Choquette and Larry Baker are at it again in Juneau, quietly pushing through important new business legislation. Last year, the two freshmen Republicans from Anchorage demonstrated that even members of the minority GOP — and first-term freshmen, at that — can get major legislation through the Democrat-controlled State House. They may be up for an encore performance this year.

This year there are two proposals, one in which the two are co-sponsor that involves a further reworking of commercial and industrial loan programs of the Alaska Industrial Development and Export Authority, the subject of last year's success. The second is a plan by Larry Baker that expands the ability of municipalities to form port authorities.

The AIDEA bill, both this year and last, makes lending programs of the authority more flexible, and more workable for commercial banks to act as loan participants. Last year's change allowed banks to amortize their share of loan participations on a shorter schedule than AIDEA. Previously, both the banks were required to match the longer terms of AIDEA's participation, requirements which made the program unworkable for commercial banks here. Alaska banks have very limited capital available for long-term lending; this change enables them to get their money out quicker, and get it into new projects.

The 1992 change removes a \$10 million limit on the total value of loans in which AIDEA participates, which enables the authority to get involved in bigger commercial projects (although AIDEA's exposure is still limited to \$10 million). Another change enables the authority to guarantee small commercial business loans with floating rates, removing the previous requirement of fixed-rates, which banks didn't like on small business loans.



Fishing vessel on the prow

Photo by Steve McCutcheon

## Commentary

### Bill says: state your prices before fishing season opens

By Rep. George Jacko Jr.

Following the events of last summer and after considerable thought about the future of the salmon industry, I decided to introduce legislation requiring salmon prices be posted in advance of the season. My intention is to get fishermen and fishbuyers discussing prices before the first fish swims up the river.

To my knowledge, this issue has never been directly addressed by the Legislature. In fact, serious discussion has never gone beyond the makeshift podiums of the summer boycotts and the ad hoc fisheries organizations formed during the heat of the moment, while the fish madly swam up the rivers.

After the organized efforts of last summer, I think it's time that the issue of preseason prices be brought before the Legislature.

Presently, the Department of Labor can intervene 120 days before a season if a third of the fishermen in an area are in a price dispute with fishbuyers. However, this law has never been utilized. Most would agree in the difficulty involved in getting fishermen together and obtaining a formal response from fishbuyers before the start of a season.

If HB 369 becomes law, fishermen will have a base price in advance that they can research and compare. The Department of Labor could then become involved, if necessary. This would alleviate many of the problems faced last summer.

Too often the rumor mill is the only source of pricing information available to fishermen. Walking the docks in the summertime, one learns it is not processors who come forth with meaningful information, rather, it is someone who heard from someone else what processor A or processor B is offering.

Although no one expects fishbuyers to publicly disclose their marketing strategy, the fact that many don't offer any information until the last moment is upsetting and certainly disadvantageous to the industry. This has been the norm in the industry for many years.

From a processor's perspective, if your competitor does not offer any preseason information, then why should you?

However, if Alaska law mandates an exchange, then all processors will have to step up to the plate

with at least some solid marketing information before the season. A careful distinction: under my legislation, processors will not be precluded from adjusting prices upward at any time.

Fishermen statewide have expressed interest in improving the dialogue with fishbuyers. I'm sure the first question on everyone's mind is, "Can and should government impose stringent regulations on the fishing industry?"

The Legislature will have to consider this from a philosophical as well as a practical standpoint. From my perspective, this matter, at the very least, deserves formal consideration.

According to the attorney general, a preseason price requirement is within the parameters of the state constitution.

The last time this issue came before the Legislature was during 1973, when the limited entry system was being crafted. A general belief existed then that salmon processors still maintained a significant hold over individual fishermen. Through credit and financing arrangements, they had the power to decide who would fish for a particular company.

Elements of collusion still remain. Although at a preliminary stage, the Department of Law is investigating allegations of price fixing in Bristol Bay and has already indicated that persuasive evidence exists regarding the setting of prices.

As the salmon industry undergoes fundamental change, it is important that the Legislature thoroughly examine what state government can do to provide direction and support. Policy guidelines will need to be established, so we don't find ourselves frantically trying to institute emergency measures as we are doing now.

Ultimately, I hope my legislation will facilitate discussion between fishermen and processors so that meaningful marketing information can be provided before the first opening of the season. Certainly no one wants the events of last summer to be repeated.

The industry is changing before our eyes—no one knows that better than fishermen and processors, many of whom are facing a long winter. In order to confront future challenges, they will need to work together, along with financiers, marketers and everyone else, to meet the increasing demands of a rapidly changing marketplace.

George Jacko Jr., a Democrat, represents Prudhoe Bay in the state House of Representatives.



MAR 09 1992 B



March 7, 1992

Representative George Jacko Jr.  
Alaska State Legislature  
P.O. Box V (MS 3100)  
Juneau, Alaska 99811

Re: HB 369

Dear Representative Jacko:

Sitka Sound Seafoods is a medium size seafood processing company with plants in Sitka and Yakutat. Besides other products, we handle seine, troll and gillnet caught salmon of all species. Several hundred salmon fishermen sell to our company.

I am a third generation fish-buyer and have lived in Southeast Alaska all of my life. I have fished and tendered fish extensively in the past. Most of my friends are fishermen. It is a rare case when a fisherman will even ask the price of fish before he delivers, because we have a history of fairness. Consequently, your proposed legislation is very hard to understand or appreciate. Obviously Bristol Bay is a different case. From what I read, there is a fundamental lack of trust between the fishermen and processors in that region. In our area, where fish generally come in over a longer period of time in smaller amounts, fishermen have options ranging from running to another port in Southeast to sell, to running to Canada or Washington to sell or joining the Sitka-based fisherman's cooperative.

I can appreciate the fisherman's natural suspicion toward the fish buyer. All too often, prices are set in a vacuum of good solid market information. Many times the wholesale buyer will not even offer a price until it is known what the size of the harvest is going to be. This tends to make fish buyers conservative. Your bill would probably have the affect of making us even more so. If I had to post a price 120 days before our season, I would simply post a very conservative guess and tell our fishermen that we'll raise it if possible if the market warrants it. This practice could possibly have the effect of lowering wholesale market expectations. Another problem I see with this is that the market can and has fallen during a fishing season. What do we do if we have a posted, guaranteed price that is suddenly too high? Do we stop buying and go broke or keep buying and go broke?

Page 1

(907) 747-6662

TELEFAX (907) 747-6268

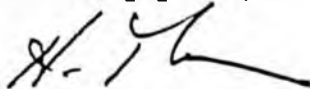
Telex 090-45-391 SSSEAFOOD SIKA

FRESH AND FROZEN SALMON, COD, BLACK COD, HALIBUT, ROCK FISH, CRAB, HERRING

One of the common misconceptions that fishermen have is that just because fish prices from company to company often end up being the same, that is evidence of collusion. The reason for this is simple - fish buyers are forced to match up in price to the most optimistic of major competitors if they want to keep their fleet. Hundreds of times a year, I'm informed by fishermen that X company is paying more than we are. In almost all cases, we elect to match that price. That's the reason that most fish companies average profits are less than other type companies, and why many go broke. As an example, our company, which has good, consistent volume and a wide variety of products, has averaged less than 1% profit on sales over the past ten years.

I do appreciate the frustration of salmon fishermen facing grave financial problems, due to the current weak markets. We see it with many of our fishermen too, but I think it's a big mistake to think that this approach is part of the solution. We should instead focus our attention on the real problems of the industry which include poor quality in some areas and lack of meaningful funding for marketing. I would be more than happy to discuss this with you further and share any information I have to give you a better appreciation of our side of the situation. Thanks for taking the time to consider this.

Sincerely yours,



Harold Thompson  
President

cc: Senator Eliason  
Representative Grussendorf



# UCIDA

UNITED COOK INLET DRIFT ASSOCIATION

P.O. Box 4649 • Kenai, Alaska 99611

(907) 283-3600 • FAX (907) 283-3306

February 24, 1992

Sent by telefax - hard copy to follow

Rep. George Jacko, Jr.  
State Capital  
Juneau, Alaska 99811-1182

Dear Rep. Jacko,

I would like to address HB 369 on behalf of the United Cook Inlet Drift Association (UCIDA). UCIDA represents the 585 salmon drift permit holders in Upper Cook Inlet. Some 350 permit holders are current members of our Association. UCIDA is also active at the state and federal levels as a member of the Executive Committee of United Fishermen of Alaska (UFA).

HB 369 has been discussed by the UCIDA and UFA Board of Directors. These comments are being sent on behalf of UCIDA. There is strong support for the intent behind HB 369 - for the need for better communication between fishermen and their processors and concern over the abuses inherent with "open" fish tickets. On the other hand, there is some concern that it will be difficult to legislate a requirement that prices be agreed upon in advance of the season. Indeed, it is our experience that a base price is established at the start of the season and the price generally rises as run strength and other factors become known. Further, in Cook Inlet many processors make their current sockeye price "retroactive". That is to say that up to a specified date, the "current" price is paid for all sockeye purchased prior to that date - even though the price on the prior fish ticket is lower than the current price.

UCIDA does NOT negotiate prices in Cook Inlet. We have established a system of "cannery representatives", and UCIDA serves as an information clearing house to coordinate information between the various "cannery fleets". Besides general agreement that processors and fishermen need to communicate more prior to the season, the phenomenon of the "open

ticket" is of major concern to fishermen in Cook Inlet and, I believe, fishermen statewide. During the price disputes of the 1991 season, one of the major demands of the cannery fleets in Cook Inlet was that all canneries post their base price for the season PRIOR to the first fishing period. The strength of this concern was clearly seen by the support many "independent or small cannery" fishermen showed by not fishing until the "majors" posted the \$1/pound base price that the small cannery operations had already agreed to.

I'll briefly discuss each section of HB 369 and try and incorporate our concerns expressed above:

**Section 1: Amend AS 16.05.690, add new subsection (c).**

UCIDA would suggest adding the word "current" before price so that the subsection reads "(c) A fish ticket recording the purchase price of salmon must include the current price paid per pound for each species of salmon purchased".

This language is meant to address our concerns that the price on the fish ticket is a guaranteed minimum. However, the language does not preclude the price going higher with retroactive payments. Further, such language should also assure the state of a minimum price for the purposes of collecting the raw fish tax. Finally, in areas like Bristol Bay where fishermen often sell on the "grounds", at least fishermen will know the minimum they will be paid. If the price doesn't "sound right" fishermen will have the option of shopping around on the grounds. We are aware of many instances, where fishermen return to town with open tickets, only to be told that "their processor" is paying less than the competition.

**Section 2: Amend AS 16.10 to add new sections 16.10.277 and 16.10.278.**

• **Section 16.10.277:**

As noted, UCIDA concurs with the intent, but does not feel this can be legislated. We also note that the existing Section 16.10.280 is similar and "on the books".

Proposed subsections 16.10.277 (a)(2) and (b) merit and could be tied in with the proposed Section 16.10.278 discussed below.

• **Section 16.10.278:**

We note that the language "current price" is used here and refer you to our comments above on Section 1. In general, everyone is better served if there is a posted "base price" prior to the season and if the "current price" is posted at the time of purchase during the season.

UCIDA appreciates the efforts you have taken to improve conditions for the industry by the introduction of HB 369. We hope our comments are useful and feel that fishermen and processors will benefit from better communication and the elimination of the "open" fish ticket while at the same time not committing processors to a final price either prior to or during the season.

Sincerely,



Theo Matthews  
Theo Matthews  
Administrative Assistant

cc: Sen. Fischer  
Sen. Kerttula  
Rep. Navarre  
Rep. Phillips  
Rep. Zawacki  
House Resources Committee  
Senate Resources Committee  
UFA

# BUSINESS

ANCHORAGE DAILY NEWS

SECTION C

Feb 21, 1992

## Salmon price fixing found

Investigator cautions that manipulation wasn't sole cause of crash

By **BRUCE MELZER**  
and **HAL BERNTON**  
Daily News business reporters

The state lawyer investigating allegations of price manipulation in Alaska's salmon market said he found evidence of price fixing but won't say where, when, how or by whom.

Jim Forbes, head of the state's antitrust office, also said the price fixing was far from the only cause of last year's dramatic

plunge in the price of salmon paid to Alaska fishermen.

"At the same time there are indications that there had been market manipulation," Forbes said.

The investigators have demanded records from more than 16 U.S. and foreign-owned fish-processing businesses.

Rick Lauber, from the industry trade group Pacific Seafood Processors Association, said it

was irresponsible for Forbes to comment on a pending investigation.

"Until such time as he's ready to seek indictment or civil action, I think it's inappropriate for him to make such a snippet of a statement that throws suspicion over a broad group of people," Lauber said.

Since last February, Forbes has been leading the state's antitrust investigation of Alaska's

processors and others in the salmon industry. Forbes would not say when it would end.

Last July, Forbes said the state was looking at whether the same people sit on the boards of competing fish companies, alleged attempts to monopolize markets and alleged attempts at price rigging among processors.

Fishermen alleged collusion

Please see Page C-6, SALMON

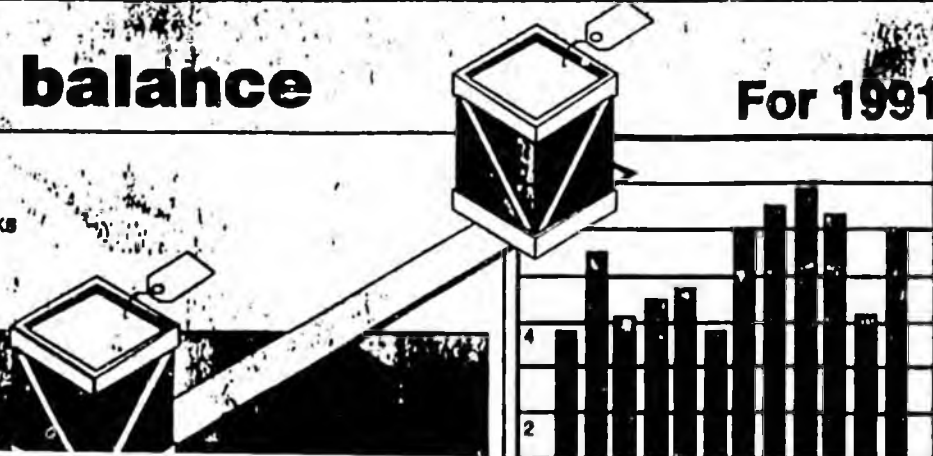
### The trade balance

For 1970-91

The \$66.2 billion in 1991 marks the lowest imbalance since \$52.4 billion in 1983.

\$100

For 1991



## Gas line rebates in works

Plans try to lure pipeline investors

By **GEORGE FROST**  
Daily News reporter

Alaska's top natural re-

because they use the gas to help pump their crude oil.

Neither buyers nor sellers have publicly committed to investing a penny in the \$13 billion project.

A copy of Heinze's handwritten draft, almost a year old, was furnished to the

Hickel, and \$200 million a year from new property tax assessments.

Legislators must approve any deal, Heinze said.

Rep. Kay Brown, the Anchorage Democrat who once ran the state's oil and gas division, says Heinze's plan

project of worse than marginal viability and you are asking people to pay money up front for the right to invest," Tussing said. "I can't conceive of any reason why somebody would pay money up front, even on an option that is refundable,

pipeline... his 12 percent Yukon Pacific stock holding to settle ethics charges.

Yukon Pacific officials did not return telephone messages Wednesday and Thursday to discuss the gas sales proposal.

## SALMON: Evidence of price fixing found

Continued from Page C-1

among processors and went on strike last summer at Bristol Bay to protest prices. Processors responded that a glut of fish in Japan, Alaska's biggest salmon buyer, caused prices to plummet.

Forbes' tantalizing glimpse into the investigation came in response to a question at a legislative budget hearing on Tuesday. Lauber, of the processors trade group, said the comment was a way for the agency to seek more funds.

For some fishermen, Forbes' remarks echo their hunches. "We have felt that way for a long time. Everyone (of the processors) is paying the same price, and it doesn't mesh with what the consumers are paying here or in Japan," said Theo Matthews of the United Cook Inlet Drift Association.

Japanese companies that own some of Alaska's largest processors have long maintained they do not discuss price with each other.

But in the early '80s the federal government brought

antitrust cases against a number of Japanese companies in the Alaska crab trade.

In 1982, more than a half-dozen companies signed consent decrees negotiated with the Justice Department. In those documents, the companies did not admit wrongdoing, but they agreed not to exchange certain price information. The list of compa-

nies included Nippon Suisan, Taiyo Fishery and Kyokuyo — all major players in Alaska's salmon industry.

Jay Hastings, a lawyer for the Japan Fisheries Association in Seattle, said the companies learned the crab lesson well and are now wary of any discussions of price with each other.



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Anchorage, Alaska 99509-2070  
(907) 276-2007

March 9, 1992

Representative George Jacko, Jr.  
Alaska State House of Representatives  
State Capitol  
Juneau, Alaska 99801-1182

Dear George,

Thank you for your February 27 letter concerning HB 369.

I believe I understand, and endorse, your purpose in proposing HB 369 and its concepts. I am skeptical that it would get the desired results, though.

That is not to say I would characterize myself as "opposed" to HB 369 (in the event anyone else cared enough to ask me!). I also recognize that, as a legislator, you must be responsive to constituents' expectations and don't enjoy the privilege of sitting back in a relatively objective and independent mode and popping off the way I can. So my comments, following, are only to express my views to you and to maintain a dialog; they're not intended to persuade you to do something other than push HB 369.

I feel very strongly that, if fishermen are to survive economically in the changing world, new relationships between fishermen and processors must emerge and/or be established. I don't know how that can happen other than as the result of continuing economic pressure on both sides. It will likely happen slowly, beginning with a single processor and a small group of individual fisherman, and will probably be scoffed at initially by other fishermen. I truly believe there is a desperate need for it to happen soon, and I wish we could find the key to awakening and enlightening the "right" handful of fishermen leaders and the "right" couple of processor executives.

George, I believe we're on the brink of potential lasting disaster, such as I've seen several times in other places and in other commodity groups. My fear is especially germane to Bristol Bay and Prince William Sound. It's that before or after this upcoming season, as a result of disruptive and tumultuous relationships with fishermen (and having nothing to do with "right" or "wrong"), one or two major processors might decide "to hell with it -- it's not worth the risk," and simply shut down the plants. History suggests that any plant shut down under those

*Alaska Commercial Fishing and Agriculture Bank*

Representative George Jacko, Jr.  
March 9, 1992  
Page 2

circumstances is likely to never operate again -- or, if it operates, it will only be under very special circumstances. Yes, the fish will continue to return; and yes, we can argue that floaters or others will show up to at least partially fill the void; but you can be certain that it would not be at a level which would support the same number of fishermen in an acceptable way.

If I were going to be critical of HB 369, of you, of your colleagues, of other leaders, it would be because no one is taking steps to help fishermen understand that the world has changed and that they must act to change with it. We're just sending them distracting signals of approval, letting them believe that State government or somebody else is going to come up with just the right kind of muscle to beat the "bad guys" into submission and everything will be like it used to be. We provide forums and encouragement for the demagogues -- the Reverend Jim Joneses of Bristol Bay -- to harangue and incite fishermen like labor leaders of the early 1900's, serving up their own special kind of slow-acting Koolaid to unsuspecting followers!

George, Bryce included with your letter a copy of your February 21 press release about HB 369. The final paragraph is a powerful statement, I believe, and so is the second prior paragraph. I wish the Governor's Salmon Strategy Task Force had truly committed itself to the realities you express in those two paragraphs. It didn't. But the need is still there. I hope you realize that, no matter what you do with HB 369, CFAB as an institution and I as an individual are ready and committed to work with you -- or anybody -- in addressing those realities (and others) in some way.

Very truly yours,



Edward E. Crane  
President

P.S. Please excuse my apparent tardiness in responding -- I received your letter just shortly before leaving for an "outside" business trip, and didn't have time to put an answer together.

MAR 18 1992 B

**SOUTHEAST ALASKA SEINERS ASSOCIATION**  
P.O. BOX 9579  
KETCHIKAN, ALASKA 99901  
\_\_\_\_\_(907) 225-5156\_\_\_\_\_

March 12, 1992

Representative George Jacko  
Alaska State Legislature  
P.O. Box V  
Juneau, Alaska 99811

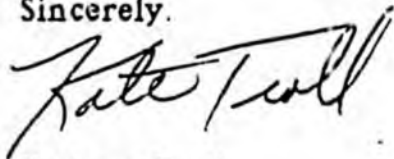
Dear George.

As a follow up to our previous phone conversation, I am writing to elucidate Southeast Alaska Seiners (SEAS) Association's position on HB 369. We agree with the intent of HB 369 as outlined by you. However, SEAS will not be supporting HB 369 nor will we be advocating amendments. There are two primary reasons. The first reason is that HB 369 appears impractical given the market dynamics of the salmon industry. We know that posting a price 120 days or even 30 days before the season would only result in the posting of a low ball guess on price and this may in the end generate more instead of less dissension between fisherman and processor.

Secondly, we would like to see how this season goes before asking the legislature to get involved. All the major processors in Southeast are meeting with their respective fleet of seiners well before the start of the 1992 season. This is a new development which is in step with the intent of HB 369, i.e. fostering timely communication about fish prices. Who knows, maybe the filing of HB 369 helped to spur this current effort of better communication between processors and fishermen.

We appreciate your concern for all salmon fishermen. Your intent is admirable.

Sincerely,



Kathryn Troll  
Executive Director

MAR 16 1992 B

Institute of Social and Economic Research  
University of Alaska Anchorage  
3211 Providence Drive  
Anchorage, Alaska 99508  
(907) 786-7717

March 16, 1992

Rep. George Jacko, Jr.  
Alaska House of Representatives  
State Capitol  
Juneau, Alaska 99801-1182

Dear George:

I apologize for responding so belatedly to your request for comments on HB 369.

I don't seem to have a copy of the bill, although I do have your letter of February 20. I really don't think I ever received one in the mail, so my comments are based on my understanding of what the bill contains, rather than the actual language.

#### Comments

1. I'm not particularly knowledgeable about this subject, since I don't know that much about how and when processors post prices or how fishermen interact with processors (that's the price we academics pay for being locked up here in our ivory towers). Probably lots of other people could give you better comments.
2. In principle, the logic of the bill makes sense to me: requiring a price to be posted in advance of the season should help communication between fishermen and fishbuyers, and should also encourage competition.
3. I am still not clear on what the meaning of the pre-season "posted price" and its relationship to the prices that fishermen eventually actually get paid. There are several different possible interpretations:
  - (a) A price for which the buyers expect to buy fish, but without any legal obligation (in other words, solely informational).
  - (b) A price at which buyers are currently offering to make binding contracts for the season. There are a lot of variations on this depending on how and when fishermen or fishbuyers are able to back out of these contracts or demand or offer higher or lower prices.

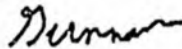
If it is (a), then it may be quite useful in increasing communication--unless processors don't take it seriously (except that not taking it seriously could lead to hard feelings).

If it is (b), then I think there is a risk that early posted prices might be lower just because there is more risk in posting a price so long in advance of the season. That

wouldn't matter, of course, if prices came up by the time of the season.

I hope that by offering the bill you do get some useful discussion of the idea with people more knowledgeable than me. I especially hope that you can get people to pay attention, what with the budget to distract them.

Sincerely,



Gunnar Knapp  
Associate Professor of Economics

FISCAL NOTE

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

BILL NO. HB 369

Revision Date: 1/7/92 Department Affected: Fish and Game  
 Title: Price Paid To Fishermen For BRU: Commercial Fisheries  
Salmon Component: Commercial Fisheries

Sponsor: Representative Jacko

Requestor: House Resources Committee

COMPONENT SERIAL NO. 

4	5	9
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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	0					
TRAVEL	0					
CONTRACTUAL	0					
SUPPLIES	0					
EQUIPMENT	0					
LAND & STRUCTURES	0					
GRANTS, CLAIMS	0					
MISCELLANEOUS	0					
<b>TOTAL OPERATING</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE:	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER FUND SOURCE:						
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

POSITIONS:

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

Estimate of current year impact: 0

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Bob Clasby Phone: 465-4210

Division: Commercial Fisheries Date: 1/7/92

Approved by Commissioner: *Don Jonsson*

Agency: Fish and Game Date: 3/23/92

DEPARTMENT OF FISH AND GAME

POSITION PAPER

Bill Number: HB 369

Sponsor: Representative Jacko

Bill Title: An act relating to the price paid to fishermen for salmon.

Department Position: Neutral

Legislative Intent: This legislation would require those who purchase salmon from commercial fishermen to post their anticipated starting salmon prices at least 120 days before the beginning of each commercial salmon fishing season.

Effects of legislation on department programs:

This legislation would require the department to designate the starting date for each commercial salmon fishery in the state. While the starting date for some salmon fisheries is established by regulation, many salmon fisheries commence based on in-season indicators of salmon abundance. Once sufficient numbers of salmon enter a fishing district, the fishery is opened by emergency order. For administrative clarity, the department would like to have the legislation establish the method for designating the start of salmon fisheries which do not have their starting dates set by regulation.

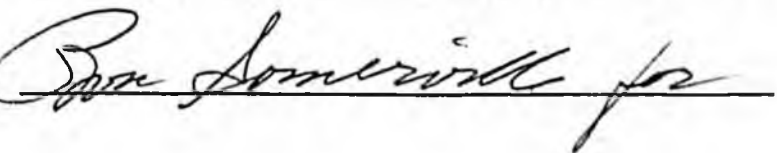
One concern the department would have with this legislation is that some fishermen might view the anticipated starting date as a date certain upon which fishing would commence. If pre-season indicators demonstrated a low abundance of salmon and the department determined it prudent to delay the opening to allow more fish to enter spawning areas, some fishermen might misunderstand the purpose of the designated starting date and criticize the department for not opening the fishery.

This legislation would have no other programmatic effects upon the Department of Fish and Game.

Proposed Amendments:

In order to avoid arguments about how the starting date for a commercial salmon fishery shall be designated, the department recommends that the legislation be amended to specify that for fisheries which open by emergency order, the designated starting date shall be the earliest date that the fishery has opened in the previous ten years.

Commissioner's Signature



Date

3/23/92

FISCAL NOTE

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

BILL NO. HB 369

Revision Date: March 19, 1992  
Title: Price Paid to Fishermen

Department Affected: Department of Revenue  
BRU: Revenue Operations  
Component: Income and Excise Audit

Sponsor: Rep. Jacko  
Requestor: \_\_\_\_\_

COMPONENT SERIAL NO. | 1 | 1 | 3 |

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LANDS & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
REVENUE	0.0	0.0	0.0	0.0	0.0	0.0
FUND SOURCE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
FUND SOURCE						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: 0.0

ANALYSIS:

This bill requires fish processors and buyers to publish a proposed price for salmon at least 120 days before the start of a salmon fishing season.

Prepared By: Paul E. Dick *P.E.D.* *LEM* Phone: (907) 465-2320  
Division: Income and Excise Audit Date: March 19, 1992

Approved by Commissioner: Darrel J. Rexwinkel *DJR* *Paul*  
Agency: Department of Revenue Date: 3/19/92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

Richard Eliason Jr.  
709 Sirstad St.  
Sitka, Alaska 99835

Honorable George Jacko  
State Capitol  
Juneau, Alaska 99801-1182

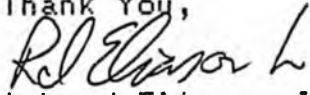
Dear Representative Jacko,

I am writing in reference to House Bill 369.

The 4 month listing of Fish prices will allow for to much error in actual market predictions (It's kind of like taking out your ice skates in July). It will add much confusion to the fisherman and the processors seperating them more than what they are already.

I believe only a 4wk period is nescarry for the posting of fish prices prior to the fishing season. The 30 day period will allow for more acurate market predictions, making it more realistic for the fisherman and processors as well. In compacting this period into 30 days, it will also allow for a much more intense period concentrating on the actual season that is at hand. This time period is plenty enough time for fishing groups to organize themselves, as well to set up there own markets as they see needed. I thank you for your concern in this matter and hope all goes well for HB 369.

cc  
Sen. Dick Eliason  
Rep. Ben Grussendorf  
House Resources Committee

Thank You,  
  
Richard Eliason Jr.  
F/V Laurel C SE Drift

H B

3 7 7

7-LS1624J  
Lauterbach  
2/19/92

**CS FOR HOUSE BILL NO. 377 (RESOURCES)**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**SEVENTEENTH LEGISLATURE - SECOND SESSION**

**BY THE HOUSE RESOURCES COMMITTEE**

Offered:  
Referred:

Sponsor(s): **REPRESENTATIVES MOYER, Boyer, Brown, Finkelstein, B.Davis, Koponen**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to air quality control and the prevention, abatement, and control of air  
2 pollution; relating to civil and criminal penalties, damages, and other remedies for air  
3 quality control violations; amending the definition of 'hazardous substance'; relating to use  
4 of the oil and hazardous substance release response fund; relating to inspection and  
5 enforcement powers of the Department of Environmental Conservation; and providing for  
6 an effective date."

7 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

8 \* Section 1. PURPOSES. (a) The primary purpose of this Act is to bring the state into compliance  
9 with the 1990 amendments to the federal Clean Air Act codified at 42 U.S.C. 7401 - 7671q. Changes  
10 in state law are necessary to allow the state to continue to have primary management of air quality in  
11 the state and to retain federal approval of the state's air quality control program in order to ensure the  
12 continued receipt of federal highway and air pollution control money. The federal Environmental  
13 Protection Agency must prohibit the approval of highway projects and highway grants, and may withhold

1 air pollution control grants, if the state does not comply with 42 U.S.C. 7401 - 7671q (Clean Air Act).

2 (b) The legislature also recognizes that the replacement of automobiles, light trucks, and vans  
3 in the state fleet with vehicles fueled by energy sources other than gasoline will contribute to the  
4 improvement of air quality in the communities in which they are used. Therefore, another purpose of  
5 this Act is to require state agencies operating in nonattainment areas for carbon monoxide and particulate  
6 matter to procure alternative-fueled vehicles.

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

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

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

15 Sec. 36.30.09. PROCUREMENT OF CERTAIN VEHICLES. (a) When the  
16 Department of Transportation and Public Facilities procures an automobile, light truck, or van  
17 for addition to the state fleet at a location in which the Department of Transportation and Public  
18 Facilities maintains a fleet of at least 15 vehicles, the procurement officer shall procure only an  
19 alternative-fueled vehicle if an alternative-fueled vehicle is available from an original equipment  
20 manufacturing company.

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

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

27 \* Sec. 4. AS 46 is amended by adding a new chapter to read:

28 CHAPTER 14. AIR QUALITY CONTROL.

29 ARTICLE 1. CLASSIFICATIONS AND STANDARDS.

30 Sec. 46.14.010. EMISSION CONTROL REGULATIONS. (a) After public hearing, the  
31 department may adopt regulations under this chapter as necessary to prevent, abate, control, or

1 identify air pollution due to emissions, including regulations setting emission standards,  
2 performance standards, and limitations. The standards and limitations may be based on risk  
3 assessments or on available technology and may be for the state as a whole or may vary from  
4 area to area in recognition of local conditions.

5 (b) In implementing this chapter, the department may not require a person to use  
6 machinery, devices, or equipment from a particular supplier or produced by a particular  
7 manufacturer if the required emission limitations or performance standards may be met by  
8 machinery, devices, or equipment available from another manufacturer.

9 Sec. 46.14.020. CLASSIFICATION OF FACILITIES OR SOURCES; REPORTING.

10 (a) The department, by regulation, may classify facilities or sources that, in the department's  
11 determination, are likely to cause or contribute to air pollution, according to the levels and types  
12 of emissions and other characteristics that relate to air quality. The department may make a  
13 classification under this subsection applicable to the state as a whole or to a designated area of  
14 the state. The department shall base the classifications on consideration of health, economic, and  
15 social factors, sensitivity of the receiving environment, and physical effects on property.

16 (b) The department or a local program authorized under AS 46.14.500 may require an  
17 owner and operator of a facility or source classified under this section to report information to  
18 the department or the authorized local program concerning location, size, and height of  
19 contaminant outlets or area sources, processes employed, fuels used, the nature and time periods  
20 or duration of emissions, and other information relevant to air quality that is available or  
21 reasonably capable of being calculated and compiled.

22 ARTICLE 2. EMISSION CONTROL PERMIT PROGRAM.

23 Sec. 46.14.200. PERMITS FOR CONSTRUCTION, MODIFICATION, OR  
24 OPERATION. (a) A person may not construct, install, modify, reconstruct, or establish a  
25 facility subject to AS 46.14.205(a), except in compliance with the construction permit and an  
26 order or other determination of the department under this chapter.

27 (b) A person may not operate a major facility or a facility that contains one or more of  
28 the sources listed in AS 46.14.205(b) except in compliance with the operating permit and an  
29 order or other determination of the department under this chapter.

30 (c) An owner and operator required to have a permit under AS 46.14.205 shall comply  
31 with the terms and conditions of that permit.

1 (d) The department shall ensure that permits issued, modified, amended, or renewed  
2 under this chapter comply with the emission limitations and other requirements of 42 U.S.C.  
3 7401 - 7671q (Clean Air Act), applicable federal regulations, and the state air quality control  
4 plan.

5 (e) If the federal administrator exempts a source from the requirements of 42 U.S.C.  
6 7661a(a) (Clean Air Act, sec. 502(a)), the commissioner, by regulation, may exempt that source  
7 from some or all of the requirements of this chapter.

8 Sec. 46.14.205. FACILITIES REQUIRING PERMITS. (a) Before constructing,  
9 installing, modifying, reconstructing, or establishing a facility, the owner and operator shall obtain  
10 a construction permit from the department if the facility is any one of the following:

11 (1) a new facility that has the potential to emit greater than 250 tons per year  
12 (TPY) of a regulated air contaminant;

13 (2) a new facility of a type classified under AS 46.14.020 that has the potential  
14 to emit greater than 100 TPY of a regulated air contaminant, including fugitive emissions;

15 (3) a new facility of a type classified under AS 46.14.020 that has the potential  
16 to violate the ambient air quality standards or otherwise pose a threat to public health;

17 (4) a new facility that has the potential to emit greater than 10 TPY of a  
18 hazardous air contaminant, or 25 TPY, in the aggregate, of two or more hazardous air  
19 contaminants;

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

24 (b) The owner and operator of a facility shall obtain an operating permit from the  
25 department if the facility is a major facility or if the facility contains one or more of the  
26 following sources:

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

30 (2) another stationary source designated by the federal administrator or the  
31 department, by regulation.

1           **Sec. 46.14.210. EMISSION CONTROL PERMIT PROGRAM REGULATIONS. (a)**

2           The department may adopt regulations to implement AS 46.14.200 - 46.14.290. The department  
3 shall adopt regulations to address the following elements of the emission control permit program:

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

6                   (2) procedures for preparation and submission of a monitoring, reporting, and  
7 quality assurance plan and, if required, a compliance schedule describing how a permitted facility  
8 will comply with the applicable requirements of AS 46.14.200 - 46.14.295;

9                   (3) procedures for

10                           (A) expeditiously determining when a permit application is complete;

11                           (B) processing and reviewing an application; and

12                           (C) providing public notice, including opportunity for public comment and

13           hearing;

14                   (4) standard permit conditions, including conditions for

15                           (A) emission standards and limitations;

16                           (B) monitoring, recordkeeping, and reporting;

17                           (C) inspection and entry;

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

19                           (E) annual certification of compliance; and

20                           (F) excess emission or process deviation reporting;

21                   (5) fees, and procedures for collecting fees;

22                   (6) procedures for renewing, modifying, amending, or revising a permit that  
23 provide maximum flexibility in the operation of the facility consistent with the purposes of this  
24 chapter and with 42 U.S.C. 7401 - 7671q (Clean Air Act); and

25                   (7) procedures for approving physical or operational limitations that will reduce  
26 a facility's emissions to levels below those that would make the facility subject to AS 46.14.200  
27 and 46.14.205.

28           (b) The absence of, or the department's failure to adopt, a regulation under this section  
29 does not relieve a person from compliance with a permit issued under this chapter and with other  
30 provisions of law, including emission control requirements.

31           **Sec. 46.14.215. STATE POLICY; STATE AIR QUALITY PLAN. (a) It is the policy**

1 of the state to have a program to prevent, abate, control, and identify air pollution that complies  
2 with 42 U.S.C. 7401 - 7671q (Clean Air Act), as amended, and federal regulations adopted under  
3 those laws.

4 (b) The department shall act for the state in any negotiations relative to the state air  
5 quality control plan developed under 42 U.S.C. 7401 - 7671q (Clean Air Act). The department  
6 may adopt regulations necessary to implement the state plan.

7 Sec. 46.14.220. TIME FOR SUBMISSION OF PERMIT APPLICATIONS. The owner  
8 and operator of a facility required to have an operating permit under this chapter shall submit the  
9 required application and monitoring, reporting, and quality assurance plan no later than 12  
10 months after the date on which the facility becomes subject to AS 46.14.200, or at an earlier time  
11 if required by the department.

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

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

17 (2) an operating permit, other than a general operating permit, within 18 months  
18 after receipt of the complete application by the department.

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

25 (c) Failure by the department to act within the time limits established in or under (a) or  
26 (b) of this section shall be treated as a final agency action, but only for purposes of judicial  
27 review to require that action be taken by the department.

28 Sec. 46.14.230. REVIEW OF PERMIT ACTION. If aggrieved by a permit action under  
29 this chapter, the owner and operator, a person who participated in the public comment process,  
30 or a person with standing under state or federal law to obtain administrative or judicial review  
31 of a permit action under this chapter may request an adjudicatory hearing under the department's

1 adjudicatory hearing procedures. After the issuance of an adjudicatory hearing decision, a party  
2 to the hearing may obtain judicial review of that decision as provided in Alaska Rules of  
3 Appellate Procedure.

4 Sec. 46.14.235. SINGLE PERMIT. Regardless of whether a facility contains a single  
5 source or multiple sources, only a single operating permit is required for the facility.

6 Sec. 46.14.240. GENERAL OPERATING PERMITS. After notice and opportunity for  
7 public comment and hearing, and after approval by the federal administrator, the department may  
8 establish a general operating permit that would be applicable to more than one facility determined  
9 by the department to be similar in source structure. A general operating permit must contain  
10 provisions that meet the requirements of this chapter applicable to operating permits. A general  
11 operating permit is not effective for a specific facility until the owner and operator of the facility  
12 has submitted an application under AS 46.14.220 and the department has issued the general  
13 operating permit. The department shall issue or deny a general operating permit within 30 days  
14 after receipt of a complete application.

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

22 (b) Within 60 days after the close of the 45-day period under (a) of this section, and in  
23 accordance with procedures established in federal regulations adopted under 42 U.S.C. 7661b(2)  
24 (Clean Air Act, sec. 505b(2)), a person may petition the federal administrator to file an objection  
25 to the permit.

26 Sec. 46.14.250. PAYMENT OF FEES AND FEE SCHEDULE. (a) The owner and  
27 operator of a facility who is required to apply for a permit under AS 46.14.205 shall pay the  
28 applicable fees set out in the fee schedule adopted by the department under (b) of this section.  
29 The owner and operator shall pay the fees to the department or to the public entity designated  
30 by the department.

31 (b) The department shall adopt, by regulation, a fee schedule based upon the type of

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

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

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

27 (d) The department shall charge and collect a processing fee of \$100 from a person who  
28 applies for a permit under this chapter if the department determines that the permit applied for  
29 is not required.

30 Sec. 46.14.255. PENALTY AND INTEREST FOR NONPAYMENT. The department  
31 shall adopt regulations that provide for the assessment of a penalty of up to 50 percent of the fee

1 established under AS 46.14.250(b) against the owner and operator of a facility if the owner and  
2 operator fail to timely pay a fee lawfully imposed under this chapter. The department may also  
3 assess interest against the owner and operator, computed under AS 45.45.010(a), after a fee is  
4 due under this chapter and is unpaid.

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

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

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

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

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

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

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

3 (2) the permit contains a material mistake;

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

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

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

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

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

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

28 (b) Nothing in this section alters or affects

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

31 (2) the liability of an owner and operator for a violation of applicable

1 requirements of law before or at the time of permit issuance.

2 Sec. 46.14.290. TIMELY AND COMPLETE APPLICATION AS SHIELD. If an owner  
3 and operator have submitted a timely and complete application for a permit or a permit renewal,  
4 as applicable, but final action has not been taken on the application, the owner's and operator's  
5 failure to have an operating permit is not a violation of this chapter unless the delay in final  
6 action was due to the failure of the owner and operator to timely submit information required or  
7 requested to process the application. An owner and operator required to have an operating permit  
8 under this chapter are not in violation of the operating permit program established under this  
9 chapter before the date on which the owner and operator are required to submit an application  
10 under AS 46.14.220.

### 11 ARTICLE 3. MOTOR VEHICLE POLLUTION CONTROL PROGRAM.

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

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

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

30 (d) If the department adopts regulations requiring the maintenance of air pollution control  
31 systems or mechanisms in motor vehicles to control emissions from the vehicle, a motor vehicle

1 subject to those regulations may not be issued a certificate of inspection unless the required air  
2 pollution control system or mechanism has been inspected in accordance with the standards,  
3 testing techniques, and instructions furnished by the department and the motor vehicle has been  
4 found to meet those standards. A valid certificate of inspection for the emission control system,  
5 if required by the department, must be presented to the Department of Public Safety before that  
6 department may register a motor vehicle.

7 ARTICLE 4. SMALL BUSINESS ASSISTANCE PROGRAM.

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

11 Sec. 46.14.410. SCOPE OF PROGRAM. (a) The small business assistance program  
12 shall

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

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

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

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

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

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

29 (7) provide small business facility operators with a list of auditors available for  
30 auditing the operation of the facility or, if possible, and at the request of a facility owner or  
31 operator, audit a facility to evaluate compliance with this chapter and regulations adopted under

1 this chapter; an audit under this paragraph may not be regarded as an inspection or investigation;

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

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

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

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

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

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

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

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

30 (b) The panel consists of

31 (1) two members, who are not owners or representatives of owners of small

1 business stationary sources, selected by the governor to represent the general public;

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

3 (3) four members, who are owners or representatives of owners of small business  
4 stationary sources, selected as follows:

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

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

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

17 (c) The compliance advisory panel shall

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

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

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

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

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

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

31 ARTICLE 5. LOCAL PROGRAMS.

1           Sec. 46.14.500. LOCAL AIR QUALITY CONTROL PROGRAMS. (a) With the  
2 approval of the department, a municipality with a population of 1,000 or more may establish and  
3 administer within its jurisdiction a local air quality control program that is consistent with all or  
4 part of the department's air quality program as established under this chapter. A first or second  
5 class borough may administer an air quality control program approved by the department under  
6 this subsection on an areawide basis and is not subject to the restrictions for acquiring additional  
7 areawide powers specified in AS 29.35.300 - 29.35.350. A third class borough may administer  
8 an air quality control program approved by the department under this subsection only in a service  
9 area formed under AS 29.35.490(b) or (c).

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

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

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

19           (2) local air contaminant sources; or

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

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

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

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

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

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

31           (e) A local air quality control program shall provide for the exemption of a locally

1 registered motor vehicle from motor vehicle emission requirements adopted under AS 46.14.300  
2 if the motor vehicle is not used within the program's jurisdiction.

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

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

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

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

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

1 and municipality or the local air quality district.

2 (d) A municipality or local air quality district that has had its cooperative agreement  
3 terminated may resume, with the department's approval, a local air quality control program if the  
4 municipality or district agrees to comply with AS 46.14.500 and with any corrective action plan  
5 required by the department.

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

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

#### 20 ARTICLE 6. MISCELLANEOUS PROVISIONS.

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

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

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

31 (2) the records

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

(B) consist of meteorological or ambient air quality data collected by the operator to support a permit application or amendment.

820. RESPONSIBILITIES OF OWNERS AND OPERATORS. Unless provided otherwise, the responsibilities of this chapter and of regulations adopted are imposed on the owner and the operator of a facility subject to this chapter.

8 If the owner and operator of the facility are separate persons, only one person is required to  
9 discharge a specific responsibility. Both persons are liable for noncompliance with the  
10 requirements of this chapter or of regulations adopted under this chapter.

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

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

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

# **CORRECTION**

**THIS DOCUMENT  
HAS BEEN REPHOTOGRAPHED  
TO ASSURE LEGIBILITY**

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

3 (B) consist of meteorological or ambient air quality data collected by the  
4 owner or operator to support a permit application or amendment.

5 Sec. 46.14.820. RESPONSIBILITIES OF OWNERS AND OPERATORS. Unless  
6 specifically indicated otherwise, the responsibilities of this chapter and of regulations adopted  
7 under this chapter are imposed on the owner and the operator of a facility subject to this chapter.  
8 If the owner and operator of the facility are separate persons, only one person is required to  
9 discharge a specific responsibility. Both persons are liable for noncompliance with the  
10 requirements of this chapter or of regulations adopted under this chapter.

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

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

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

1 subsection for good cause.

2 (d) If an administrative hearing is requested, the department shall grant a hearing and  
3 conduct the hearing in accordance with its adjudicatory hearing procedures. After the hearing,  
4 the department may modify, rescind, or affirm the administrative penalty. The modification,  
5 rescission, or affirmation of a penalty under this subsection is a final agency action.

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

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

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

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

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

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

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

28 Sec. 46.14.840. CLEAN AIR PROTECTION FUND. (a) The clean air protection fund  
29 is established. The fund consists of

30 (1) fees, penalties, and interest collected by the department under AS 46.14.250  
31 and 46.14.255, as required by 42 U.S.C. 7661a(b)(3)(C)(iii) (Clean Air Act, sec. 502(b)(3)(C)(iii))

1 for state participation in the emission control permit program; and

2 (2) appropriations to the fund.

3 (b) The money deposited into the clean air protection fund under (a)(1) of this section  
4 may be used solely to cover the reasonable direct and indirect costs, including court costs and  
5 attorney fees, required to support the permit program under this chapter, and those activities of  
6 the small business assistance program that are directed at facilities subject to this chapter.

7 Sec. 46.14.850. SPECIAL ACCOUNT. An administrative penalty, and any interest,  
8 attorney fees, and costs collected under AS 46.14.830, and any civil penalties, assessments, or  
9 damages collected under AS 46.03.760 or 46.03.790 as a result of a violation relating to this  
10 chapter, shall be deposited in the general fund.

#### 11 ARTICLE 7. GENERAL PROVISIONS.

12 Sec. 46.14.900. LIMITATION OF POWERS. This chapter does not

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

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

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

19 Sec. 46.14.990. DEFINITIONS. In this chapter,

20 (1) "air contaminant" means a regulated air contaminant or a hazardous air  
21 contaminant;

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

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

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

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

- 1 (6) "commissioner" means the commissioner of environmental conservation;
- 2 (7) "construct" or "construction" means to fabricate, erect, or install, or to make
- 3 a physical change, that would result in emissions;
- 4 (8) "contaminant outlet" includes exhaust stacks, flares, vents, and other openings
- 5 in a facility from which an air contaminant could be emitted;
- 6 (9) "department" means the Department of Environmental Conservation;
- 7 (10) "emission" means a release of one or more air contaminants to the
- 8 atmosphere;
- 9 (11) "emission limitation" and "emission standard" mean a requirement established
- 10 by the department or the federal administrator, other than an ambient air quality standard, that
- 11 limits the quantity, rate, or concentration of emission of an air contaminant, including a
- 12 requirement relating to the operation or maintenance of a source to ensure continuous emission
- 13 reduction, and design, equipment, work practice, or operational standard adopted under this
- 14 chapter or 42 U.S.C. 7401 - 7671q (Clean Air Act);
- 15 (12) "equivalent emission limitation" means
- 16 (A) a limitation for hazardous air contaminants established by the federal
- 17 administrator or the commissioner on a case-by-case basis that is equivalent to the
- 18 limitation that would apply to a source or facility if an emission standard had been
- 19 adopted in a timely manner under 42 U.S.C. 7412(d) (Clean Air Act, sec. 112(d)); or
- 20 (B) if the criteria of the early reduction program established in 42 U.S.C.
- 21 7412(i)(5) (Clean Air Act, sec. 112(i)(5)) are met, a limitation established under that
- 22 subsection and 42 U.S.C. 7412(j)(5) (Clean Air Act, sec. 112(j)(5));
- 23 (13) "facility" means one or more structures, buildings, installations, or properties
- 24 upon which a source or sources are located, that are contiguous or adjacent, and that are owned
- 25 or operated by the same person or by persons under common control;
- 26 (14) "federal administrator" means the administrator of the United States
- 27 Environmental Protection Agency;
- 28 (15) "fugitive emissions" means emissions of an air contaminant that are not
- 29 emitted from a contaminant outlet;
- 30 (16) "hazardous air contaminant" means a pollutant listed in or under 42 U.S.C.
- 31 7412(b) (Clean Air Act, sec. 112(b));

- 1 (17) "local air quality control program" means a program authorized under  
2 AS 46.14.500 to implement some or all of the provisions of this chapter;
- 3 (18) "major facility" means a facility with the potential to emit at least  
4 (A) 100 TPY of a regulated air contaminant;  
5 (B) 10 TPY of a hazardous air contaminant; or  
6 (C) 25 TPY, in the aggregate, of two or more hazardous air contaminants;
- 7 (19) "modification" or "modify" means to make a change or a series of changes  
8 in operation, or any physical change or addition to a facility or source that increases the actual  
9 emissions of an air contaminant;
- 10 (20) "operator" means a person or persons who direct, control, or supervise a  
11 facility or source that has the potential to emit an air contaminant to the atmosphere;
- 12 (21) "owner" means a person or persons with a proprietary or possessory interest  
13 in a facility or source that has the potential to emit an air contaminant to the atmosphere;
- 14 (22) "person" has the meaning given in AS 01.10.060 and also includes a  
15 municipality, the University of Alaska, the Alaska Railroad Corporation, and other departments,  
16 agencies, instrumentalities, units, and corporate authorities of the state;
- 17 (23) "potential to emit" means the maximum quantity of a release of an air  
18 contaminant, considering a facility's physical or operational design, based on continual operation  
19 of all sources within the facility for 24 hours a day, 365 days a year, reduced by the effect of  
20 pollution control equipment and approved state or federal limitations on the capacity of the  
21 facility's sources or the facility to emit an air contaminant, including restrictions on hours or rates  
22 of operation and type or amount of material combusted, stored, or processed; "potential to emit"  
23 does not include
- 24 (A) a one-time, accidental release of an air contaminant; or  
25 (B) fugitive emissions, unless the facility is subject to AS 46.14.205(a)(2);
- 26 (24) "register" or "registration" means vehicle registration under AS 28.10;
- 27 (25) "regulated air contaminant" means  
28 (A) a material, compound, or element for which a national or state  
29 ambient air quality standard has been adopted;  
30 (B) oxides of nitrogen;  
31 (C) a volatile organic compound; and

1 (D) a pollutant that is addressed by a standard adopted under 42 U.S.C.  
2 7411 - 7412 (Clean Air Act, sec. 111 - 112);

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

4 (A) is owned or operated by a person who employs 100 or fewer persons;

5 (B) is a small business concern as defined in 15 U.S.C. 631 (Small  
6 Business Act); and

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

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

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

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

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

16 \* Sec. 6. AS 28.10.423 is amended to read:

17 Sec. 28.10.423. EMISSION CONTROL INSPECTION PROGRAM FEES. In addition  
18 to the annual registration fee specified in AS 28.10.421, a \$1 fee is imposed upon every vehicle  
19 required to be inspected under an emission control program established under AS 46.14.300 or  
20 46.14.500 [AS 46.03.210]. This fee shall be collected at the same time and in the same manner  
21 as the registration fee.

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

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

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

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

29 (1) provide transportation systems;

30 (2) provide water pollution control;

31 (3) provide air pollution control in accordance with AS 46.14.500 [AS 46.03.140 -

1 46.03.230];

2 (4) license day care facilities;

3 (5) license, impound, and dispose of animals.

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

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

7 (1) provide transportation systems;

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

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

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

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

15 (6) provide water pollution control;

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

18 (8) provide for economic development;

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

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

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

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

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

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

31 (b) A second class borough may by ordinance exercise the following powers on an

1 areawide basis:

2 (1) provide transportation systems;

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

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

6 (4) provide water pollution control;

7 (5) license day care facilities.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (f) A person who violates or causes or permits to be violated a provision of

1 AS 46.03.250 - 46.03.314, AS 46.14, or a regulation, a lawful order of the department, or a  
2 permit, approval, or acceptance, or term or condition of a permit, approval, or acceptance issued  
3 under AS 46.03.250 - 46.03.314 or AS 46.14 is liable, in a civil action, to the state for a sum  
4 to be assessed by the court of not less than \$500 nor more than \$100,000 for the initial violation,  
5 nor more than \$10,000 for each day after that on which the violation continues, and that shall  
6 reflect, when applicable,

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

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

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

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

17 \* Sec. 15. AS 46.03.765 is amended to read:

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

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

28 (a) A person who violates a provision of this chapter, AS 46.04, [OR] AS 46.09, or  
29 AS 46.14, or who fails to perform a duty imposed by this chapter, AS 46.04, [OR] AS 46.09, or  
30 AS 46.14, or violates or disregards an order, permit, or other determination of the department  
31 made under the provisions of this chapter, AS 46.04, [OR] AS 46.09, or AS 46.14, respectively,

1 and thereby causes the death of fish, animals, or vegetation or otherwise injures or degrades the  
2 environment of the state is liable to the state for damages.

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

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

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

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

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

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

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

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

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

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

28 (a) When, in the opinion of the department, a person is violating or is about to violate  
29 a provision of this chapter, [OR] AS 46.04, or AS 46.14, or a regulation or lawful order of the  
30 department, or a permit or certificate, or a term or condition of a permit or certificate issued by  
31 the department under this chapter, [OR] AS 46.04, AS 46.14, the department may notify the

1 person of its determination by personal service or certified mail. The determination and notice  
2 do not constitute an order under AS 46.03.820.

3 \* Sec. 20. AS 46.03.875 is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

15 \* Sec. 27. AS 46.03.140, 46.03.150, 46.03.160, 46.03.170, 46.03.180, 46.03.190, 46.03.210,  
16 46.03.220, 46.03.225, 46.03.230, and 46.03.245 are repealed.

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

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

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

25 \* Sec. 31. AS 46.14.010, 46.14.020, 46.14.200(a) and (c) - (e), 46.14.205(a)(1) - (3) and (5),  
26 46.14.210, 46.14.215, 46.14.225, 46.14.230, 46.14.235, 46.14.250, 46.14.255, 46.14.270, 46.14.280,  
27 46.14.300, 46.14.400, 46.14.410, 46.14.420, 46.14.430, 46.14.500, 46.14.510, 46.14.520, 46.14.800 -  
28 46.14.850, 46.14.900, and 46.14.990, enacted by sec. 4 of this Act, and secs. 1 and 5 - 29 of this Act  
29 take effect immediately under AS 01.10.070(c).

30 \* Sec. 32. AS 46.14.200(b), 46.14.205(a)(4) and (b), 46.14.220, 46.14.240, 46.14.245, 46.14.260,  
31 46.14.265, 46.14.275, 46.14.285, and 46.14.290, enacted by sec. 4 of this Act, take effect November 15,

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1 1993.

Davidson

# REPRESENTATIVE TOM MOYER

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

## MEMORANDUM

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

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

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

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

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

Page 2

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

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

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

FISCAL NOTE

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

BILL NO CSHB 377 (RES)

Revision Date: \_\_\_\_\_  
Title: Alaska Air Permit Statutes

Department Affected: Environmental Conservation  
BRU: Division of Environmental Quality

Sponsor: Representative Tom Moyer  
Requestor: Resources Committee

Component: Air Quality Management

COMPONENT SERIAL NO. 

1	4	2	8
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EXPENDITURES/REVENUES: (Thousands of Dollars)

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

CAPITAL						
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REVENUE (note 2)	1,320.1	0.0	894.3	366.5	841.2	506.5
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FUNDING: (Thousands of Dollars) (Incremental Increases)

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

POSITIONS:

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

Estimate of current year impact:

ANALYSIS: (Attach a separate page if necessary.)

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

Prepared by: Leonard D. Verrelli  
Division: Environmental Quality

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

Approved by Commissioner: James Alford for Don Sanders  
Agency: Department of Environmental Conservation Date: 2/2/92

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

## FISCAL NOTE COMPUTATIONS

### OVERVIEW

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

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

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

### INCREMENTAL EXPENDITURE PROJECTION

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

	FY93	FY94	FY95	FY96	FY97	FY98
Full-time positions added	18	0	6	0	0	0
Part-time positions added	.5	0	0	0	0	0
<b>Incremental costs</b>						
Line Item	FY93	FY94	FY95	FY96	FY97	FY98
71000 Personal	728.7	180.0	603.3	315.9	243.3	260.2
72000 Travel	180.2	0.0	106.3	48.7	151.5	9.5
73000 Contract	48.2	(60.0)	(393.1)	20.0	270.7	0
74000 Supplies	56.0	0.0	35.7	16.1	145.7	8.8
75690 Equipment	207.0	(120.0)	0.0	(34.2)	30.0	60.0
Year	FY93	FY94	FY95	FY96	FY97	FY98
<b>Total Cost Projection</b>	1220.1	0.0	352.2	366.5	841.2	338.5

## INCREMENTAL REVENUE PROJECTIONS

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

### Projected Incremental Revenues

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

## OVERVIEW OF TOTAL PROGRAM DEVELOPMENT

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

Year	FY92	FY93	FY94	FY95	FY96	FY97	FY98
FTE	33.5	52.0	52.0	58.5	58.5	58.5	58.5
Total Costs							
Personal	1646.5	2375.2	2555.2	3158.5	3474.4	3717.7	3977.9
Travel	175.8	356.0	356.0	462.3	511.0	662.5	672.0
Contract	816.3	864.5	804.5	411.4	431.4	702.1	702.1
Supplies	68.2	124.2	124.2	159.9	176.0	321.7	330.5
Equipment	52.2	259.2	139.2	139.2	105.0	135.0	195.0
Total	2759.0	3979.1	3979.1	4331.3	4697.8	5539.0	5877.5

### Total Program Funding

Year	FY92	FY93	FY94	FY95	FY96	FY97	FY98
Federal	1534.2	1434.2	1434.2	892.1	892.1	892.1	892.1
G.F. Match	1174.1	1174.1	1174.1	1173.5	1173.5	1135.2	967.2
P/R	49.7	1370.8	1370.8	754.1	424.1	0	0
C.A. Fund	0	0	0	1511.6	2208.1	3511.7	4018.3
Total	2759.0	3979.1	3979.1	4331.3	4697.8	5539.0	5877.5

