

ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672  
7637 SENATE RESOURCES

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# NFIB Alaska

National Federation of  
Independent Business

## POSITION PAPER

OF

NATIONAL FEDERATION OF INDEPENDENT BUSINESS  
(NFIB/ALASKA)

TO THE

SENATE RESOURCES COMMITTEE

MARCH 27, 1992

ON

SB 383

AN ACT RELATING TO AIR QUALITY CONTROL AND THE PREVENTION,  
ABATEMENT, AND CONTROL OF AIR POLLUTION; RELATING TO CIVIL  
AND CRIMINAL PENALTIES, DAMAGES, AND OTHER REMEDIES FOR AIR  
QUALITY CONTROL VIOLATIONS; RELATING TO USE OF THE OIL AND  
HAZARDOUS SUBSTANCE RELEASE RESPONSE FUND; AND PROVIDING FOR  
AN EFFECTIVE DATE.

9159 Skywood Lane  
Juneau, AK 99801



The Guardian of  
Small Business

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, MY NAME IS REBA JERREL, AND I REPRESENT THE NATIONAL FEDERATION OF INDEPENDENT BUSINESS - NFIB/ALASKA. I WOULD LIKE TO THANK YOU FOR THE OPPORTUNITY TO COMMENT ON SB 383.

THERE ARE SEVERAL AREAS OF THE BILL WE ARE CONCERNED ABOUT AND NEED TO BE AMENDED:

- SECTIONS THAT GO BEYOND THE REQUIREMENTS OF THE CLEAN AIR ACT AMENDMENTS OF 1990. THE SECTIONS THAT GIVE THEM ADDITIONAL AUTHORITY TO: REGULATE MORE TYPES OF SOURCES; SET MORE STRINGENT EMISSION STANDARDS; REGULATE MORE KINDS OF AIR POLLUTANTS; AND, TO IMPOSE ADMINISTRATIVE PENALTIES.
- THE LANGUAGE THAT SAYS THEY "MAY" EXEMPT A SOURCE WHEN THE FEDERAL ADMINISTRATOR HAS EXEMPTED A SOURCE (PAGE 3, LINE 2); AND,
- THE SECTION THAT GIVES THEM AUTHORITY TO SET A SHORTER TIME LIMIT THAN 12 MONTHS FOR APPLICATION DEADLINES (PAGE 5, LINE 6); AND,

FINALLY, THE LANGUAGE FOR THE FEE STRUCTURE NEEDS TO BE CLEARLY SPELLED OUT. HISTORICALLY, THE DEPARTMENT HAS BEEN REGULATING MOSTLY LARGE CORPORATIONS. BY THEIR OWN ESTIMATION, 600 SMALL BUSINESSES THAT HAVE NOT BEEN PREVIOUSLY REGULATED, SOON WILL BE REGULATED. WHAT MAY SEEM LIKE A SMALL OR REASONABLE FEE TO THE PERSONNEL AT THE DEPARTMENT, OR A LARGE CORPORATION COULD BE VERY ONEROUS TO A SMALL BUSINESS OWNER. LANGUAGE NEEDS TO BE INCLUDED IN THE BILL THAT STATES:

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

ALSO, ON PAGE 29, LINE 15, LANGUAGE NEEDS TO BE ADDED THAT STATES:

ANY REGULATIONS ADOPTED UNDER THIS CHAPTER SHALL NOT BE MORE STRINGENT THAN FEDERAL LAW OR REGULATIONS.

THE STATES OF IDAHO HAS ADOPTED THIS LANGUAGE FOR FOR SHALLOW INJECTION WELLS. THE STATE OF UTAH IN A 15 PAGE LAW HAS ADOPTED THE

SAME PRINCIPLE FOR RADIATION CONTROL, WATER POLLUTION CONTROL, SAFE DRINKING WATER, AIR CONSERVATION, AND SOLID AND HAZARDOUS WASTE. THIS LANGUAGE IS INCLUDED IN AN OKLAHOMA CLEAN AIR ACT NOW UNDER CONSIDERATION. TWO BILLS ARE UNDER CONSIDERATION IN KENTUCKY THAT CONTAIN THIS LANGUAGE.

FOR SOME BACKGROUND INFORMATION: NFIB/ALASKA IS COMPRISED OF 3,292 SMALL AND INDEPENDENT BUSINESS OWNERS. THE LEGISLATIVE ABENDA OF NFIB/ALASKA IS DETERMINED BY OUR BALLOT. THE BALLOT IS OUR ANNUAL POLL OF OUR MEMBERSHIP ON A SERIES OF ISSUES DEEMED CRITICAL TO SMALL BUSINESS. A MAJORITY VOTE, OF THE MEMBERS IN RESPONSE TO THE POLL, SETS OUR POLICY AND POSITION ON LEGISLATIVE ISSUES.

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

SHOULD LEGISLATION BE PASSED TO PROHIBIT THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION FROM IMPOSING ENVIRONMENTAL STANDARDS AND LIMITATIONS THAT ARE STRICTER THAN FEDERAL STANDARDS?

61.1% YES                      33% NO                      5.9% UNDECIDED

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

ARCO COMMENTS ON  
CS HB 377 (RESOURCES)

ARCO Alaska, Inc. (ARCO) appreciates the opportunity to comment on CS HB No. 377 - legislation principally designed to bring the state air permitting laws into conformity with the requirements of the Clean Air Act amendments of 1990.

We first acknowledge the substantial work which has gone into constructing the conformity bill (and its companion measure prepared by the administration - SB 383). However, we believe these efforts are premature and should be postponed until EPA issues its implementing regulations.

It is unfortunate that the federal EPA has failed to adopt regulations in a timely fashion implementing the 1990 Air Act changes. These federal regulations are an essential missing link in defining what states are going to be required to do to comply with the federal law. Many of the federal requirements can be parsed out from the statutory language itself, but many cannot. The new act is exceedingly complex, and EPA's regulations are needed to flesh out many of the statutory requirements.

The initial deadline for submitting the new state permit program changes, now November 1993, would seem to allow for waiting until the federal regulations are promulgated before undertaking passage

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of new state law. This is particularly true where the existing state permit program law is quite comprehensive and already meets most of the requirements of the new federal law for major sources.

ARCO is not opposed to enactment of conforming legislation this year if several important modifications are made. However, it would seem more prudent to have in hand a comprehensive list of EPA requirements before final enactment to avoid duplication of efforts by the legislature, ADEC, and the regulated community.

If the legislation is not postponed, the following are several changes we view as essential to CS HB 377:

1. AS 46.14.245 OBJECTION BY FEDERAL ADMINISTRATOR. (page 7). Subsection (a) would prohibit the issuance of a state air operating permit until after federal objections are resolved. This would delay the effective date of state permits (permits are now effective upon issuance by ADEC) and could greatly prolong the process for starting up new facilities.

The Clean Air Act expressly allows permits to become effective during federal review. [(Section 505(b)(3)]. In the usual course of events, permits issued by ADEC will be routinely approved by

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EPA. However, because of the complexity and novelty of the air rules, it is indeed possible that challenges to major source permits will develop, including dilatory challenges instigated by third parties.

When a competent regulatory agency (ADEC) has fully reviewed the permit application and issued a permit after opportunity for public review and participation, it is reasonable to allow a source to go ahead with a project, taking the risk that a successful challenge may result in additional or different requirements.

Subsection (b) cannot be governed by the State laws; petitions to EPA to object to the permit are a matter solely of federal law. Accordingly, subsection (b) should be removed.

2. AS 46.14.210 - EMISSION CONTROL PERMIT PROGRAM REGULATIONS (page 5). These regulations are the heart of the new state permit program. Unless they are issued promptly, emission sources (and ADEC) will have an impossible chore attempting to comply with federal law and in piecing together practicable air permits. ADEC should have a specified period of time to write these regulations (we suggest 180 days). Further, the bill should specify time limits for the application review and issuance

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processes defined in subsection (a)(3).

Section 46.14.225 would provide an 18-month deadline for issuance of an operating permit after receipt of a complete application. This is too long, especially given the increased resources that should become available to the department from the new permit fees. Furthermore, no limit is placed on the often protracted process of determining when an application is "complete." The deadline should be no longer than 60 days for the determination of whether an application is complete and no longer than 180 days for issuance after receipt of a complete application.

3. AS 46.14.260 DURATION OF OPERATING PERMITS. (page 9)  
Subsection (b) provides that an existing permit is effective pending issuance of a new permit if a timely and complete application for renewal is filed. This section should be amended to provide for the protection if a timely and substantially complete application is filed, and to allow ADEC, in its discretion, to waive the time limit requirement on a case-by-case basis. Without flexibility, this requirement could have draconian effects on an ongoing facility or business. Similar changes should be made to Section 46.14.290, TIMELY AND COMPLETE APPLICATION AS A SHIELD, to protect against the drastic effects of failing to comply

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with even minor and ministerial requirements or information demands.

4. AS 46.14.830 ADMINISTRATIVE PENALTIES FOR AIR POLLUTION.  
(pages 18-19) Federal law does not require the enactment of state administrative penalties. Further, there is no compelling need to set up an extra-judicial penalty requirement in which severe penalties may be imposed without clear standards and without an adequate judicial review of the penalty. The penalties would be steep (\$10,000 per day per offense matches those penalties which may be judicially imposed). Moreover, judicial review would be under the "any reasonable basis" standard which essentially disables the court from a thorough discretionary review of the penalty. Lastly, judicial review is available only after an administrative hearing. If ADEC is to be given any "traffic ticket" authority, it should be limited to much lower "per day" and "total" amounts.

5. UPSET/MALFUNCTION REGULATION (for insertion into Section (a) of AS 46.14.210) - Federal regulations contain express recognition that unavoidable (i.e., not due to inadequate equipment or operator error) upsets or malfunctions in process or control equipment are not enforceable violations of law. See, for example,

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40 CFR 60.8(c). State law and regulations do not contain a similar recognition. A provision should be added as 46.14.210(a)(8) as follows:

(8.) an upset/malfunction regulation that excuses violations of permits or other regulatory provisions in the event such violations are caused by an unavoidable upset or malfunction in process or control equipment or during a start up or shut down interval.

Again, ARCO appreciates this opportunity to comment on this broad ranging legislation. The legislature must of course be responsive to requirements that it modify law to meet new federal standards. However, the regulated community needs adequate time to fully review the effect of the proposed legislation on all of its operations. The legislature should then fully consider the impacts of this legislation, particularly on those businesses not previously subject to regulation under the Clean Air Act. ARCO believes that the above changes, at a minimum, are essential if the bill is to go forward.

Frank

**SB-383/HB-377**

**SUMMARY OF SIGNIFICANT DIFFERENCES**

Prepared by ADEC March 26, 1992

The identified changes enumerated below reflect the major differences between SB 383 and HB 377. These changes are accomplished by the House Resources Committee and also include changes embodied in a House Judiciary Committee work draft discussed in a March 18, 1992, meeting. Many additional minor changes were made that are shown as underlined in the March 18 House Judiciary Committee work draft.

**TITLE:** Changes are to: 1) more succinctly describe the definition change for hazardous substances, and 2) indicate that the bill will alter the inspection and enforcement powers of the Department of Environmental Conservation.

**Section 2:** A new Section 2 is created that will add a new section, AS 14.09.030, which encourages contractors that provide school bus transportation to procure vehicles that use alternative fuels.

**Section 3:** A new Section 3 is created that will add a new section, AS 37.30.097, which requires the Department of Transportation and Public Facilities in some locations of the state to procure new vehicles that are designed to use alternative fuels.

**Section 4:**

**AS 46.14.205 PERMIT APPLICABILITY**

Several changes were made, including the title of the section. Most notable changes were:

- 1) to require a construction permit for some existing facilities that emit hazardous air pollutants when a facility undergoes a modification that causes a net increase of those pollutants above a certain level;
- 2) require a construction permit for a facility that "reconstructs" an air pollution source within the facility;

- 3) requires that if any facility must obtain a construction permit, that facility must also obtain an operating permit under subsection (b); and
- 4) the definition of the term "potential to emit" was changed, as required by federal law, to include "fugitive emissions" (those emissions that generally are not released from an exhaust stack or vent) in the calculation of potential to emit except where specifically exempted.

#### **AS 46.14.215 STATE PLAN**

The title was changed to add state policy with associated language changes to indicate the state policy.

#### **AS 46.14.222 COMPLETENESS DETERMINATION**

This new section was introduced to the House Judiciary Committee on March 18, 1992. The purpose would be to define the time period in which the department would evaluate a permit application. Such a provision would assist permit applicants in knowing when, as well as how, to effect the "Application as a Shield" provision of AS 46.14.292

#### **AS 46.14.225 ADMINISTRATIVE ACTIONS REGARDING PERMITS**

Subsection (a)(2) was changed to reflect that operating permits are to be issued within 12 months rather than 18 months after a complete application is received.

#### **AS 46.14.250 PAYMENT OF FEES AND FEE STRUCTURE**

Some language additions were made to subsection (b) to restrict the collection of excess monies, and a major addition was made to subsection (c) to require DEC to conduct a periodic evaluation of the fee structure.

#### **AS 46.14.255 PENALTY AND INTEREST FOR NONPAYMENT**

Language has been changed to reflect a maximum penalty of 5 percent per month, not to exceed 25 percent total, rather than a 50 percent penalty.

#### **AS 46.14.270 REOPENING OF PERMITS**

A language change was made in subsection (b) that would require, rather than enable, the department to treat a permit reopening as a renewal if the procedural requirements are met.

#### **AS 46.14.275 TERMINATION, MODIFICATION, AMENDMENT, OR REVOCATION AND REISSUANCE OF PERMITS**

Several changes were accomplished here; however, due to some drafting errors, they have not all been adopted by the House Judiciary Committee. Basically, the section was broken into two subsections. Subsection (a) would now address criteria upon which a permit could be terminated, modified, amended, or revoked and reissued. A new subsection (b) would set criteria for only modifying, amending, or revoking and reissuing permits. Also, the failure of an owner or operator to pay a fee or penalty would no longer be a basis for any action under this section, but would be a basis for the department to deny renewal of a permit.

#### **AS 46.14.410 SCOPE OF PROGRAM (SMALL BUSINESS ASSISTANCE PROGRAM)**

By adding a definition of "person" in section 900 and including local governments and other state entities in that definition, the small business assistance program can be extended to those entities, thereby expanding the assistance to a greater number of affected parties. However, federal law prohibits the use of permit fee monies to accomplish that additional assistance to those entities included in the larger meaning of person. If the assistance were to be provided to entities now included, general fund monies would be required.

#### **AS 46.14.430 COMPLIANCE ADVISORY PANEL**

This section was rewritten to change the focus from a panel that is appointed by the Governor based upon submission of candidate names from the Legislature to a panel that is composed of individual appointments, some of which are made by the Governor and some by the Legislature, as enumerated in the Clean Air Act.

#### **AS 46.14.510 CONFIDENTIALITY OF RECORDS**

Subsection (2)(B) has been deleted because it is in conflict with the public disclosure requirements of the Clean Air Act. Alternatively, the same objective can be achieved if a company secures copyright protection for ambient air quality and meteorological data, or qualifies the data as trade secret.

7-LS1624P  
Lauterbach  
3/17/92

RECEIVED  
MAR 17 1992

Dept. of Environmental Conservation  
Air Quality Section

CS FOR HOUSE BILL NO. 377 ( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY

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; clarifying the definition of 'hazardous substance' to include  
4 releases and threatened releases to the atmosphere; amending the lien provisions relating  
5 to the oil and hazardous substance release response fund; relating to inspection and  
6 enforcement powers of the Department of Environmental Conservation; and providing for  
7 an effective date."

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

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

1 Protection Agency must prohibit the approval of highway projects and highway grants, and may withhold  
2 air pollution control grants, if the state does not comply with 42 U.S.C. 7401 - 7671q (Clean Air Act).

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

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

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

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

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

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

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

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

29 CHAPTER 14. AIR QUALITY CONTROL.

30 ARTICLE 1. CLASSIFICATIONS AND STANDARDS.

31 Sec. 46.14.010. EMISSION CONTROL REGULATIONS. (a) After public hearing, the

1 department may adopt regulations under this chapter as necessary to prevent, abate, control, or  
2 identify air pollution due to emissions, including regulations setting emission standards,  
3 performance standards, and limitations. The standards and limitations may be based on human  
4 health and welfare or on available technology and may be for the state as a whole or may vary  
5 from area to area in recognition of local conditions. The department may provide exemptions  
6 for fugitive emissions to the extent allowed under federal laws and regulations.

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

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

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

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

24 ARTICLE 2. EMISSION CONTROL PERMIT PROGRAM.

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

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

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

3 (d) The department shall ensure that permits issued, modified, amended, or renewed  
4 under this chapter comply with the emission limitations and other requirements of 42 U.S.C.  
5 7401 - 7671q (Clean Air Act), applicable federal regulations, and the state air quality control  
6 plan.

7 (e) If the federal administrator exempts a source from the requirements of 42 U.S.C.  
8 7661a(a) (Clean Air Act, sec. 502(a)), the commissioner, by regulation, may exempt that source  
9 from some or all of the requirements of this chapter.

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

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

15 (2) a new facility of a type classified under AS 46.14.020 that emits or has the  
16 potential to emit greater than 100 TPY of a regulated air contaminant;

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

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

22 (5) an existing facility, otherwise described in (1), (2), (3), or (4) of this  
23 subsection, for which

24 (A) a modification is proposed that would increase actual emissions of an  
25 air contaminant by an amount equal to or greater than the emission quantity set out in  
26 regulations adopted under AS 46.14.010; or

27 (B) reconstruction is proposed that makes it technologically and  
28 economically feasible to meet the applicable standards of this chapter.

29 (b) The owner and operator of a facility shall obtain an operating permit from the  
30 department if the facility is a major facility, a facility subject to (a) of this section, or a facility  
31 that contains one or more of the following sources:

1 (1) a source subject to federal new source performance standards under 42 U.S.C.  
2 7411 (Clean Air Act, sec. 111) or national emission standards for hazardous air pollutants issued  
3 under 42 U.S.C. 7412 (Clean Air Act, sec. 112); or

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

6 Sec. 46.14.210. EMISSION CONTROL PERMIT PROGRAM REGULATIONS. (a)  
7 The department shall adopt regulations to address the following elements of the emission control  
8 permit program:

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

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

14 (3) procedures for

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

16 (B) processing and reviewing an application;

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

18 hearing; and

19 (D) issuing permits;

20 (4) standard permit conditions, including conditions for

21 (A) emission standards and limitations;

22 (B) monitoring, recordkeeping, and reporting;

23 (C) inspection and entry;

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

25 (E) annual certification of compliance; and

26 (F) excess emission or process deviation reporting;

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

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

31 (7) procedures for approving physical or operational limitations that will reduce

1 a facility's emissions to levels below those that would make the facility subject to AS 46.14.200  
2 and 46.14.205.

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

6 Sec. 46.14.215. STATE POLICY; STATE AIR QUALITY PLAN. (a) It is the policy  
7 of the state to have a program to prevent, abate, control, and identify air pollution that complies  
8 with 42 U.S.C. 7401 - 7671q (Clean Air Act), as amended, and federal regulations adopted under  
9 those laws.

10 (b) The department shall act for the state in any negotiations relative to the state air  
11 quality control plan developed under 42 U.S.C. 7401 - 7671q (Clean Air Act). The department  
12 may adopt regulations necessary to implement the state plan. [~~previous (b) moved to AS 46.14.200(d)~~]

13 Sec. 46.14.220. TIME FOR SUBMISSION OF PERMIT APPLICATIONS. The owner  
14 and operator of a facility required to have an operating permit under this chapter shall submit the  
15 required application and monitoring, reporting, and quality assurance plan no later than 12  
16 months after the date on which the facility becomes subject to AS 46.14.200(b), or at an earlier  
17 time if required by the department. New section AS 46.14.222 is proposed

18 Sec. 46.14.225. ADMINISTRATIVE ACTIONS REGARDING PERMITS. (a) Except  
19 as provided in AS 46.14.245 and 46.14.255(b), after receipt of a complete application, and after  
20 notice and opportunity for public comment and hearing, the department shall issue or deny

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

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

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

31 (c) Failure by the department to act within the time limits established in or under (a) or

1 (b) of this section shall be treated as a final agency action, but only for purposes of judicial  
2 review to require that action be taken by the department.

3 Sec. 46.14.230. REVIEW OF PERMIT ACTION. If aggrieved by a permit action under  
4 this chapter, the owner and operator, a person who participated in the public comment process,  
5 or a person with standing under state or federal law to obtain administrative or judicial review  
6 of a permit action under this chapter may request an adjudicatory hearing under the department's  
7 adjudicatory hearing procedures. After the issuance of an adjudicatory hearing decision, a party  
8 to the hearing may obtain judicial review of that decision as provided in Alaska Rules of  
9 Appellate Procedure.

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

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

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

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

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

6           (b) The department shall adopt, by regulation, a fee schedule based upon the type of  
7 facilities; the quantities, types or toxicity of air contaminants emitted; the emission source  
8 classifications; and other factors reflecting the cost of administering the emission control permit  
9 program under this chapter. Fees must be sufficient to cover, but not exceed, the reasonable  
10 direct and indirect costs required to develop and implement the permit program and the federally  
11 mandated aspects of the small business assistance program established in this chapter. For  
12 purposes of this subsection, "costs" include expenditures for

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

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

1 section.

2 **Sec. 46.14.255. PENALTY AND INTEREST FOR NONPAYMENT.** (a) The  
3 department shall adopt regulations that provide for the assessment of a penalty of five percent  
4 per month of delinquency up to a maximum of 25 percent of the fee established under  
5 AS 46.14.250(b) against the owner and operator of a facility if the owner and operator fail to  
6 timely pay a fee lawfully imposed under this chapter. The department may also assess interest  
7 against the owner and operator, computed under AS 45.45.010(a), after a fee is due under this  
8 chapter and is unpaid.

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

12 **Sec. 46.14.260. DURATION OF OPERATING PERMITS.** (a) An operating permit  
13 under this chapter shall be issued for a fixed term established by the department that is no longer  
14 than five years and no shorter than three years after the date of issue, except as provided for  
15 temporary permits under AS 46.14.280.

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

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

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

1 renewal have been met.

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

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

8 (1) terminate, modify, amend, or revoke and reissue a construction or operating  
9 permit if the department finds that the permit was obtained by misrepresentation of material fact  
10 or by failure of the owner and operator to disclose fully the facts relating to issuance of the  
11 permit;

12 (2) modify, amend, or revoke and reissue a construction or operating permit if the  
13 department finds that

14 (A) the permit contains a material mistake;

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

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

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

24 Sec. 46.14.280. TEMPORARY OPERATIONS. The department may issue a single  
25 operating permit under AS 46.14.225, authorizing a facility to operate at specific multiple  
26 locations in the state for temporary periods of time not to exceed one year at any one location.  
27 A permit described in this section is valid only for the specific locations identified in the  
28 application and authorized by the department. The department may not issue a permit under this  
29 section unless the permit contains conditions that will ensure compliance with this chapter at each  
30 authorized location, including compliance with ambient air quality standards and applicable  
31 increment or visibility requirements adopted under this chapter. A permit under this section must

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1 require the owner and operator to notify the department at least 30 days before a change in  
2 location of a facility permitted under this section.

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

6 (b) Nothing in this section alters or affects

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

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

11 Sec. 46.14.290. TIMELY AND COMPLETE APPLICATION AS SHIELD. If an owner  
12 and operator have submitted a timely and complete application for a permit or a permit renewal,  
13 as applicable, but final action has not been taken on the application, the owner's and operator's  
14 failure to have an operating permit is not a violation of this chapter unless the delay in final  
15 action was due to the failure of the owner and operator to timely submit information required or  
16 requested to process the application. An owner and operator required to have an operating permit  
17 under this chapter are not in violation of the operating permit program established under this  
18 chapter before the date on which the owner and operator are required to submit an application  
19 under AS 46.14.220.

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

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

27 (b) Unless otherwise exempted by law, a person shall maintain in operating condition any  
28 element of the air pollution control system or mechanism of a motor vehicle if the department  
29 adopts regulations requiring that an air pollution control system or mechanism be maintained in  
30 or on the motor vehicle. Failure to maintain a required system or mechanism in operating  
31 condition subjects the motor vehicle's registration to suspension or cancellation. A motor vehicle

1 whose registration has been suspended or canceled under this subsection is not eligible for  
2 subsequent registration until the owner or operator obtains certification from the department,  
3 based on a demonstration that the air pollution control system or mechanism is restored to  
4 operating condition.

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

8 (d) If the department adopts regulations requiring the maintenance of air pollution control  
9 systems or mechanisms in motor vehicles to control emissions from the vehicle, a motor vehicle  
10 subject to those regulations may not be issued a certificate of inspection unless the required air  
11 pollution control system or mechanism has been inspected in accordance with the standards,  
12 testing techniques, and instructions furnished by the department and the motor vehicle has been  
13 found to meet those standards. A valid certificate of inspection for the emission control system,  
14 if required by the department, must be presented to the Department of Public Safety before that  
15 department may register a motor vehicle.

#### 16 ARTICLE 4. SMALL BUSINESS ASSISTANCE PROGRAM.

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

20 Sec. 46.14.410. SCOPE OF PROGRAM. (a) The small business assistance program  
21 shall

22 (1) collect, coordinate, and disseminate information on methods and technologies  
23 that will assist small business facilities to comply with this chapter and regulations adopted under  
24 this chapter,

25 (2) encourage lawful cooperation among small business facilities and other  
26 persons to facilitate compliance with this chapter and regulations adopted under this chapter,

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

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

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

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

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

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

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

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

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

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

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

29 Sec. 46.14.420. POWER TO LIMIT PROGRAM. After consultation with the federal  
30 administrator and the administrator of the United States Small Business Administration, and after  
31 providing notice and opportunity for public hearing, the department may exclude from the scope

1 of the small business assistance program established in AS 46.14.410 a category or subcategory  
2 of small business facilities that the department finds to have sufficient technical and financial  
3 capabilities to meet the requirements of this chapter and federal law without the assistance  
4 provided under AS 46.14.400 - 46.14.430.

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

8 (b) The panel consists of

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

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

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

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

16 (B) if there are members of the senate who are not part of the majority  
17 caucus of the senate, the leader of the largest nonmajority group shall select a panel  
18 member; if all members of the senate are in the majority caucus, then the president of the  
19 senate shall select a second panel member in addition to the selection authorized under  
20 (A) of this paragraph;

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

26 (c) The compliance advisory panel shall

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

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

30 (3) prepare advisory opinions concerning the effectiveness of the small business  
31 assistance program, difficulties encountered in making the program efficient and effective, and

1 degree of enforcement and severity of air pollution offenses;

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

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

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

9 ARTICLE 5. LOCAL PROGRAMS.

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

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

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

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

28 (2) local air contaminant sources; or

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

30 (d) A municipality or a local air quality district seeking department approval for a local  
31 air quality control program shall enter into a cooperative agreement with the department. The

1 cooperative agreement must include provisions specifying

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

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

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

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

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

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

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

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

28 (b) If, after the hearing, the department upholds the determination made in the written  
29 notice, the department shall provide the municipality or local air quality district with a written  
30 finding setting out the nature of the deficiencies and a description of the necessary action to be  
31 taken in order for the program to prevent or control air pollution. The department shall provide

1 its finding to the municipality or district within 45 days after the closure of the public hearing  
2 record. The department shall set a reasonable period of time for the municipality or local air  
3 quality district to take corrective action in response to the department's finding.

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

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

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

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

#### 29 ARTICLE 6. MISCELLANEOUS PROVISIONS.

30 Sec. 46.14.800. PUBLIC RECORDS. Except as provided in AS 46.14.810, permits,  
31 permit applications, emissions and monitoring reports, compliance reports, certifications, and

1 monitoring, reporting, and quality assurance plans in the department's possession and control are  
2 available to the public for inspection and copying.

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

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

9 (2) the records relate to production figures, sales figures, processes, or production  
10 techniques of the owner and operator that are entitled to protection as trade secrets.

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

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

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

31 (c) If a penalty is assessed under this section, the department shall provide the assessment

1 notice to the person affected, by personal service or by certified mail, return receipt requested.  
2 An administrative penalty assessed under this section becomes a final agency action 30 days after  
3 service or mailing of the assessment notice unless an administrative hearing is requested by the  
4 person against whom the penalty is assessed. Failure to request an administrative hearing within  
5 30 days after service or mailing of the assessment notice constitutes a waiver of that person's  
6 right to an administrative hearing. The department may extend the time periods specified in this  
7 subsection for good cause.

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

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

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

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

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

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

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

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

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

5 (1) fees, penalties, and interest collected by the department under AS 46.14.250  
6 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))  
7 for state participation in the emission control permit program; and

8 (2) appropriations to the fund.

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

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

#### 17 ARTICLE 7. GENERAL PROVISIONS.

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

19 (1) grant jurisdiction or authority with respect to air contamination existing solely  
20 within a residential dwelling or a commercial or industrial plant, workplace, or shop;

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

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

25 Sec. 46.14.990. DEFINITIONS. In this chapter,

26 (1) "air contaminant" means a regulated air contaminant or a hazardous air  
27 contaminant;

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

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

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

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

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

9 (7) "construction permit" means a permit under AS 46.14.205(a);

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

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

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

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

21 (12) "equivalent emission limitation" means

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

26 (B) if the criteria of the early reduction program established in 42 U.S.C.  
27 7412(i)(5) (Clean Air Act, sec. 112(i)(5)) are met, a limitation established under that  
28 subsection and 42 U.S.C. 7412(j)(5) (Clean Air Act, sec. 112(j)(5));

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

1 (14) "federal administrator" means the administrator of the United States  
2 Environmental Protection Agency;

3 (15) "fugitive emissions" means emissions of an air contaminant that could not  
4 reasonably be emitted from a contaminant outlet;

5 (16) "hazardous air contaminant" means a pollutant listed in or under 42 U.S.C.  
6 7412(b) (Clean Air Act, sec. 112(b));

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

9 (18) "major facility" means a facility that emits or has the potential to emit at  
10 least

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

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

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

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

17 (20) "operating permit" means a permit under AS 46.14.205(b);

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

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

22 (23) "person" has the meaning given in AS 01.10.060 and also includes an agency  
23 of the United States, a municipality, the University of Alaska, the Alaska Railroad Corporation,  
24 and other departments, agencies, instrumentalities, units, and corporate authorities of the state;

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

- 1 (A) a one-time, accidental release of an air contaminant; or  
 2 (B) the fugitive emissions specifically exempted under the department's  
 3 regulations;

4 (25) "reconstruct" means to replace components of a facility with new components  
 5 to such an extent that the fixed capital cost of the new components exceeds 50 percent of the  
 6 fixed capital cost that would be required to construct a comparable entirely new facility;

7 (26) "register" or "registration" means vehicle registration under AS 28.10;

8 (27) "regulated air contaminant" means

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

11 (B) oxides of nitrogen;

12 (C) a volatile organic compound; and

13 (D) a pollutant that is addressed by a standard adopted under 42 U.S.C.  
 14 7411 - 7412 (Clean Air Act, sec. 111 - 112);

15 (28) "small business facility" means a facility that

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

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

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

20 (29) "source" means a device, process, activity, or equipment that causes, or could  
 21 cause, a release of an air contaminant;

22 (30) "TPY" means tons per year.

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

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

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

29 Sec. 28.10.423. EMISSION CONTROL INSPECTION PROGRAM FEES. In addition  
 30 to the annual registration fee specified in AS 28.10.421, a \$1 fee is imposed upon every vehicle  
 31 required to be inspected under an emission control program established under AS 46.14.300 or

1        46.14.500 [AS 46.03.210]. This fee shall be collected at the same time and in the same manner  
2        as the registration fee.

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

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

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

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

- 10                    (1) provide transportation systems;
- 11                    (2) provide water pollution control;
- 12                    (3) provide air pollution control in accordance with AS 46.14.500 [AS 46.03.140 -  
13        46.03.230];
- 14                    (4) license day care facilities;
- 15                    (5) license, impound, and dispose of animals.

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

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

- 19                    (1) provide transportation systems;
- 20                    (2) regulate the offering for sale, exposure for sale, sale, use, or explosion of  
21        fireworks;
- 22                    (3) license, impound, and dispose of animals;
- 23                    (4) subject to AS 29.35.050, provide garbage, solid waste, and septic waste  
24        collection and disposal;
- 25                    (5) provide air pollution control under AS 46.14.500 [IN ACCORDANCE WITH  
26        AS 46.03.140 - 46.03.230];
- 27                    (6) provide water pollution control;
- 28                    (7) participate in federal or state loan programs for housing rehabilitation and  
29        improvement for energy conservation;
- 30                    (8) provide for economic development;
- 31                    (9) provide for the acquisition and construction of local service roads and trails

1 under AS 19.30.111 - 19.30.251;

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

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

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

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

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

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

14 (1) provide transportation systems;

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

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

18 (4) provide water pollution control;

19 (5) license day care facilities.

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

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

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

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

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

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

- 1 (3) hazardous waste permits under AS 46.03.299 and 46.03.302;
- 2 (4) plan approvals and permits for sewerage system and treatment works and
- 3 wastewater disposal systems, and plan approvals for drinking water systems, under AS 46.03.720;
- 4 (5) oil discharge financial responsibility approvals under AS 46.04.040;
- 5 (6) oil discharge contingency plan approvals under AS 46.04.030;
- 6 (7) water and wastewater operator training under AS 46.30.

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

8 (44) Department of Environmental Conservation, except to the extent that

9 AS 44.62.360 - 44.62.400 are inconsistent with the manner in which proceedings are initiated

10 under the provisions of AS 46.03 and AS 46.14;

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

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

13 AS 46.03.250 - 46.03.314, AS 46.14, or a regulation, a lawful order of the department, or a

14 permit, approval, or acceptance, or term or condition of a permit, approval, or acceptance issued

15 under AS 46.03.250 - 46.03.314 or AS 46.14 is liable, in a civil action, to the state for a sum

16 to be assessed by the court of not less than \$500 nor more than \$100,000 for the initial violation,

17 nor more than \$10,000 for each day after that on which the violation continues, and that shall

18 reflect, when applicable,

19 (1) reasonable compensation in the nature of liquidated damages for any adverse

20 environmental effects caused by the violation, that shall be determined by the court according

21 to the toxicity, degradability and dispersal characteristics of the substance discharged, the

22 sensitivity of the receiving environment, and the degree to which the discharge degrades existing

23 environmental quality;

24 (2) reasonable costs incurred by the state in detection, investigation, and attempted

25 correction of the violation;

26 (3) the economic savings realized by the person in not complying with the

27 requirement for which a violation is charged; and

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

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

30 Sec. 46.03.765. INJUNCTIONS. The superior court has jurisdiction to enjoin a violation

31 of this chapter, AS 46.04, [OR] AS 46.09, AS 46.14, or of a regulation, a lawful order of the

1 department, or permit, approval, or acceptance, or term or condition of a permit, approval, or  
2 acceptance issued under this chapter, AS 46.04, [OR] AS 46.09, or AS 46.14. In actions brought  
3 under this section, temporary or preliminary relief may be obtained upon a showing of an  
4 imminent threat of continued violation, and probable success on the merits, without the necessity  
5 of demonstrating physical irreparable harm. The balance of equities in actions under this section  
6 may affect the timing of compliance, but not the necessity of compliance within a reasonable  
7 period of time.

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

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

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

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

18 (1) violates a provision of this chapter, AS 46.04, [OR] AS 46.09, or AS 46.14,  
19 a regulation or order of the department, or a permit, approval, or acceptance, or a term or  
20 condition of a permit, approval, or acceptance issued under this chapter, AS 46.04, [OR]  
21 AS 46.09, or AS 46.14;

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

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

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

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

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

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

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

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

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

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

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

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

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

25                    (a) The state has a lien for expenditures by the state from the oil and hazardous substance  
 26                    release response fund or from any other state fund, for the costs of response, containment,  
 27                    removal, or remedial action resulting from an oil or hazardous substance release [SPILL], or,  
 28                    with respect to response costs, the substantial threat of a release of oil or a hazardous substance  
 29                    against all property owned by a person who is determined by the commissioner to be liable for  
 30                    the expenditures under this chapter, AS 46.03, AS 46.04, AS 46.14, 42 U.S.C. 9607, or other  
 31                    state or federal law. The lien includes interest, at the maximum rate allowable under

1 AS 45.45.010(a), from the date of the expenditures. The state may file an action in a court of  
2 competent jurisdiction in order to foreclose on the lien.

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

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

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

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

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

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

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

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

27 \* Sec. 27. AS 46.03.140, 46.03.150, 46.03.160, 46.03.170, 46.03.180, 46.03.190, 46.03.210,  
28 46.03.220, 46.03.225, 46.03.230, and 46.03.245 are repealed.

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

1 statute takes effect under sec. 31 or sec. 32 of this Act.

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

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

6 \* Sec. 31. AS 46.14.010, 46.14.020, 46.14.200(a) and (c) - (e), 46.14.205(a)(1) - (3) and (5),  
7 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,  
8 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 -  
9 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  
10 take effect immediately under AS 01.10.070(c).

11 \* 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,  
12 46.14.265, 46.14.275, 46.14.285, and 46.14.290, enacted by sec. 4 of this Act, take effect November 15,  
13 1993.

Post-it™ brand fax transmittal memo 1071		# of pages > 3
To Terry	From	Ronan
Co. Senate Resources	Co.	NFIB
Dept. SB 383	Phone #	789-4278
Fax # 465-3922	Fax #	789-3433

# NFIB Alaska

National Federation of Independent Business

## POSITION PAPER

OF

NATIONAL FEDERATION OF INDEPENDENT BUSINESS  
(NFIB/ALASKA)

TO THE

SENATE RESOURCES COMMITTEE

MARCH 27, 1992

ON

SB 383

AN ACT RELATING TO AIR QUALITY CONTROL AND THE PREVENTION, ABATEMENT, AND CONTROL OF AIR POLLUTION; RELATING TO CIVIL AND CRIMINAL PENALTIES, DAMAGES, AND OTHER REMEDIES FOR AIR QUALITY CONTROL VIOLATIONS; RELATING TO USE OF THE OIL AND HAZARDOUS SUBSTANCE RELEASE RESPONSE FUND; AND PROVIDING FOR AN EFFECTIVE DATE.

9159 Skywood Lane  
Juneau, AK 99801



The Guardian of Small Business

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, MY NAME IS RESA JERREL, AND I REPRESENT THE NATIONAL FEDERATION OF INDEPENDENT BUSINESS - NFIB/ALASKA. I WOULD LIKE TO THANK YOU FOR THE OPPORTUNITY TO COMMENT ON SB 383.

THERE ARE SEVERAL AREAS OF THE BILL WE ARE CONCERNED ABOUT AND NEED TO BE AMENDED:

- SECTIONS THAT GO BEYOND THE REQUIREMENTS OF THE CLEAN AIR ACT AMENDMENTS OF 1990. THE SECTIONS THAT GIVE THEM ADDITIONAL AUTHORITY TO: REGULATE MORE TYPES OF SOURCES; SET MORE STRINGENT EMISSION STANDARDS; REGULATE MORE KINDS OF AIR POLLUTANTS; AND, TO IMPOSE ADMINISTRATIVE PENALTIES.
- THE LANGUAGE THAT SAYS THEY "MAY" EXEMPT A SOURCE WHEN THE FEDERAL ADMINISTRATOR HAS EXEMPTED A SOURCE (PAGE 3, LINE 2); AND,
- THE SECTION THAT GIVES THEM AUTHORITY TO SET A SHORTER TIME LIMIT THAN 12 MONTHS FOR APPLICATION DEADLINES (PAGE 5, LINE 6); AND,

FINALLY, THE LANGUAGE FOR THE FEE STRUCTURE NEEDS TO BE CLEARLY SPELLED OUT. HISTORICALLY, THE DEPARTMENT HAS BEEN REGULATING MOSTLY LARGE CORPORATIONS. BY THEIR OWN ESTIMATION, 600 SMALL BUSINESSES THAT HAVE NOT BEEN PREVIOUSLY REGULATED, SOON WILL BE REGULATED. WHAT MAY SEEM LIKE A SMALL OR REASONABLE FEE TO THE PERSONNEL AT THE DEPARTMENT, OR A LARGE CORPORATION COULD BE VERY ONEROUS TO A SMALL BUSINESS OWNER. LANGUAGE NEEDS TO BE INCLUDED IN THE BILL THAT STATES:

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

ALSO, ON PAGE 29, LINE 15, LANGUAGE NEEDS TO BE ADDED THAT STATES:

ANY REGULATIONS ADOPTED UNDER THIS CHAPTER SHALL NOT BE MORE STRINGENT THAN FEDERAL LAW OR REGULATIONS.

THE STATES OF IDAHO HAS ADOPTED THIS LANGUAGE FOR FOR SHALLOW INJECTION WELLS. THE STATE OF UTAH IN A 15 PAGE LAW HAS ADOPTED THE

SAME PRINCIPLE FOR RADIATION CONTROL, WATER POLLUTION CONTROL, SAFE DRINKING WATER, AIR CONSERVATION, AND SOLID AND HAZARDOUS WASTE. THIS LANGUAGE IS INCLUDED IN AN OKLAHOMA CLEAN AIR ACT NOW UNDER CONSIDERATION. TWO BILLS ARE UNDER CONSIDERATION IN KENTUCKY THAT CONTAIN THIS LANGUAGE.

FOR SOME BACKGROUND INFORMATION: NFIB/ALASKA IS COMPRISED OF 3,292 SMALL AND INDEPENDENT BUSINESS OWNERS. THE LEGISLATIVE ABENDA OF NFIB/ALASKA IS DETERMINED BY OUR BALLOT. THE BALLOT IS OUR ANNUAL POLL OF OUR MEMBERSHIP ON A SERIES OF ISSUES DEEMED CRITICAL TO SMALL BUSINESS. A MAJORITY VOTE, OF THE MEMBERS IN RESPONSE TO THE POLL, SETS OUR POLICY AND POSITION ON LEGISLATIVE ISSUES.

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

SHOULD LEGISLATION BE PASSED TO PROHIBIT THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION FROM IMPOSING ENVIRONMENTAL STANDARDS AND LIMITATIONS THAT ARE STRICTER THAN FEDERAL STANDARDS?

61.1% YES

33% NO

5.9% UNDECIDED

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



**DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

**Air Quality Management**

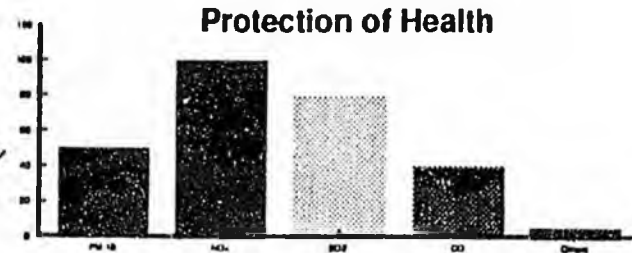


**1990 AMENDMENTS to the CLEAN AIR ACT  
and their IMPACTS on ALASKA**



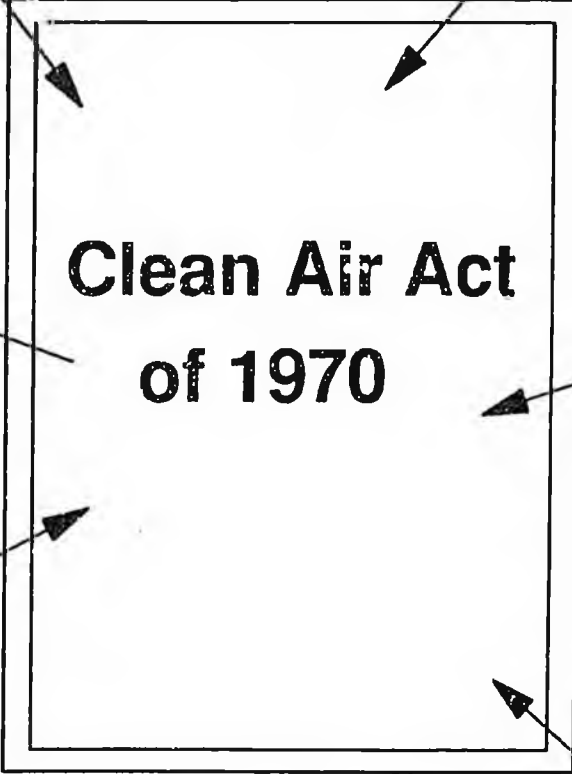
### Mobile Sources

Vehicle Tailpipe Standards

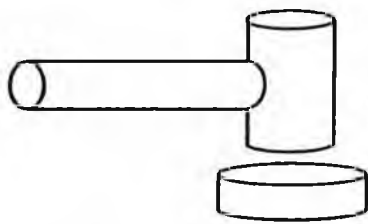


### Ambient Air Quality Standards

State  
Air  
Quality  
Control  
Plan

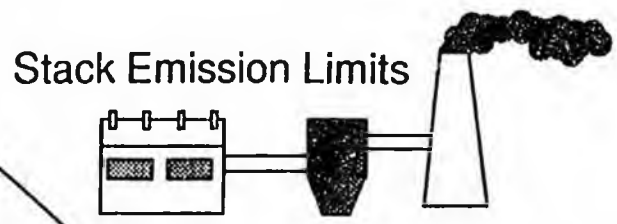


Clean up poor  
Air Quality Regions



### Enforcement

Civil Penalties - \$10,000/day  
Criminal Penalties - \$10,000/day

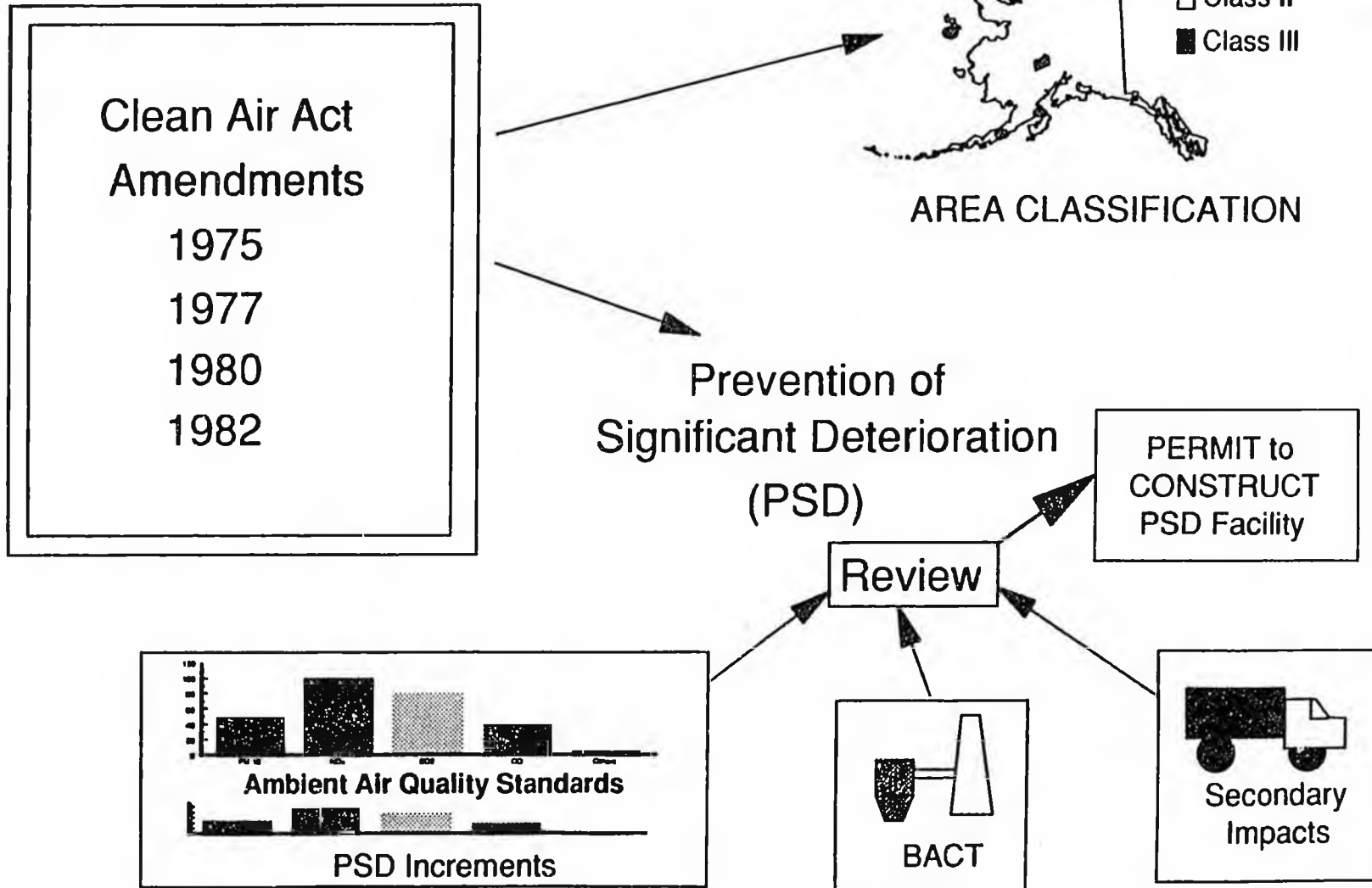


### Stack Emission Limits

State Stack Emission Standards  
Federal New Source Performance Standards  
National Emission Standards for Hazardous Air Pollutants

# PROGRAMS ADDED by AMENDMENTS

In addition to changes in previous components of the ACT





**Mobile Sources**  
Cold Start  
CO Standards  
Inspections

# EFFECTS OF 1990 AMENDMENTS



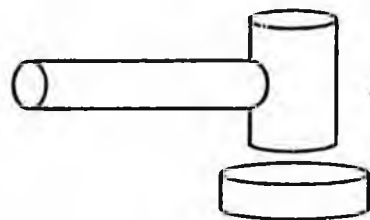
CLEAN UP OF  
NON-ATTAINMENT AREAS

List of  
189  
TOXIC AIR  
POLLUTANTS

**Clean Air Act  
Amendments**  
Nov. 15, 1990

STATE  
OPERATING  
PERMIT  
PROGRAM

Federal Emission Standards  
State Emission Standards  
New Source Performance Standards  
Standards for Hazardous Air Pollutants  
Early Reduction/MACT  
Permit Fees  
Voluntary Emission Limits  
Certification of Compliance  
Reporting & Monitoring Procedures  
Ability to Reopen for Cause  
Public Comment  
EPA Review  
Judicial Review of Actions



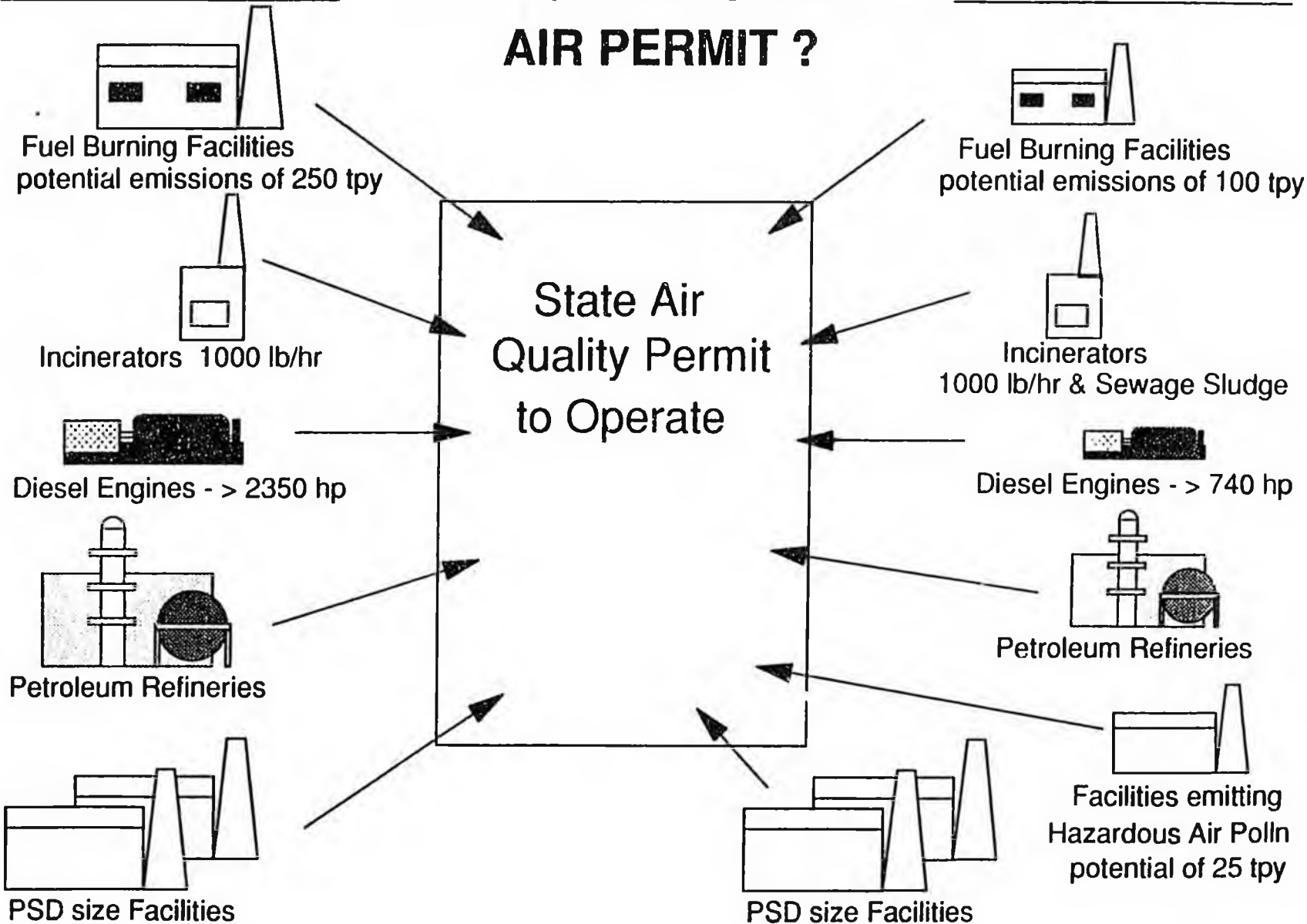
**Enforcement**  
Civil Penalties - \$10,000/day  
Criminal Penalties - \$10,000/day

Small Business  
Assistance Program /  
Pollution Prevention

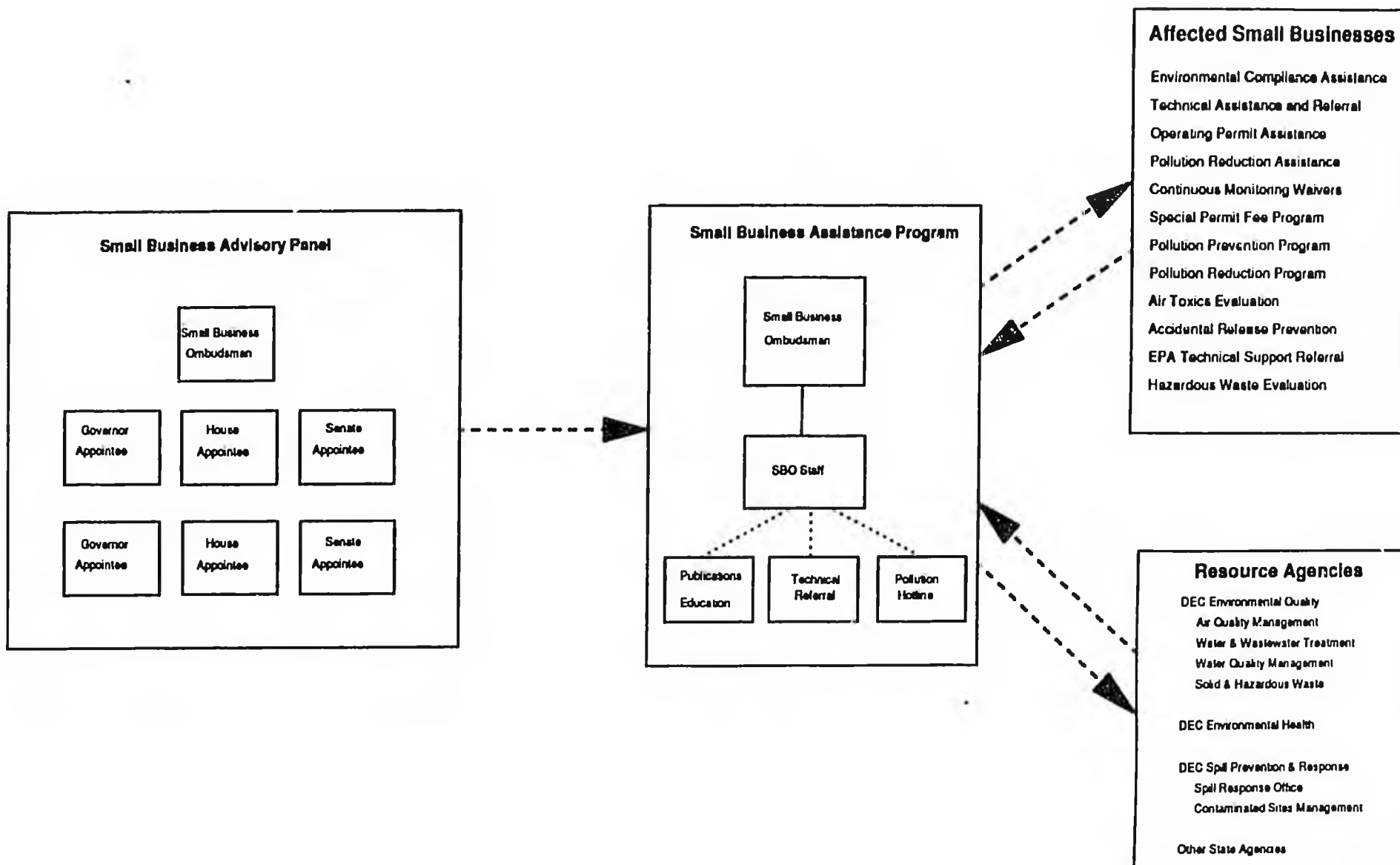
OLD CLEAN AIR ACT

# WHO NEEDS AN AIR PERMIT ?

1990 CLEAN AIR ACT



# Small Business Assistance Program



# **ALASKA AIR STATUTES**

## **REQUIRED & ESSENTIAL FEATURES**

**Exclusive Fund for Air Permit Program**

**Create Small Business Assistance Program**

**Create Advisory Panel**

**Provide Assistance to Larger Group**

**Modify Criminal Provisions and Fines**

**Construction Permits v. Operating Permits**

**Agency/Operator Emission Limits to Avoid Need for Permit**

**General Permits**

**Flexibility for Permit Fee Structure**

**Ability to Implement New Federal Rules in Permits**

**Reopening of Permits**

**Emission Limits Based on Health Risks or  
Available Technology**

**Local Governments to be Implementing Partners**

**Administrative Penalties for Violations**

**Deter EPA Intervention**

**Public Involvement in Permits**

**Public Review of Permits**

**Appeal through Adjudication**

**Judicial Review**

**EPA Review**

**Public to Petition EPA**

**Retain & Update Existing Statutes**

# Permit Contents

STATE AIR QUALITY  
PERMIT TO OPERATE

**Single Permit contains all State and Federal Requirements**

**Facility Location, Mailing address**

**Federal Emission Standards**

**State Emission Standards**

**New Source Performance Standards**

**Standards for Hazardous Air Pollutants**

**Early Reduction/MACT**

\* **Permit Fees**

**Voluntary Emission Limits**

\* **Small Business Assistance Provisions**

\* **Certification of Compliance**

**Reporting & Monitoring Procedures**

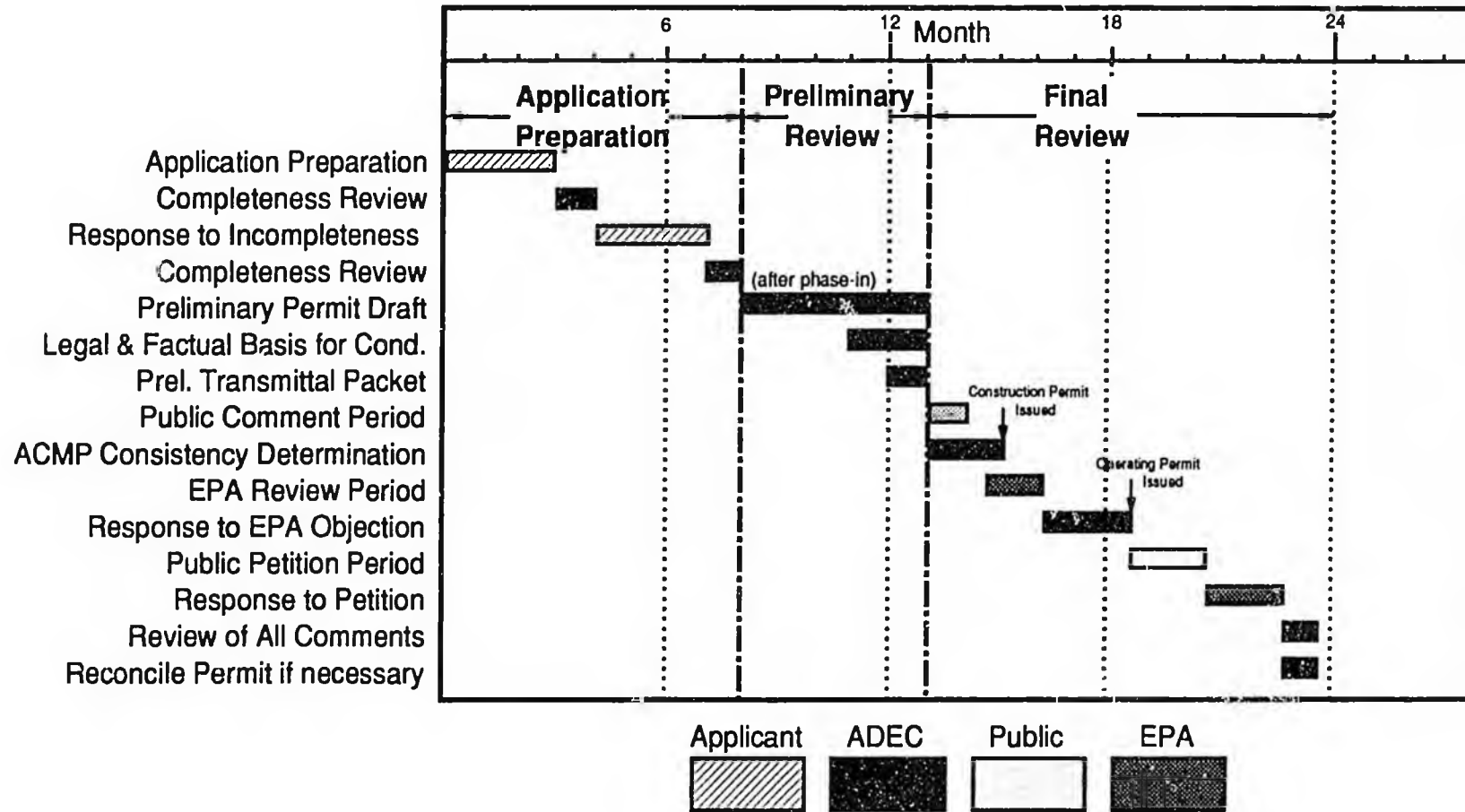
\* **Ability to Reopen for Cause**

**Public Comment**

\* **EPA Review**

\* **Judicial Review of Actions**

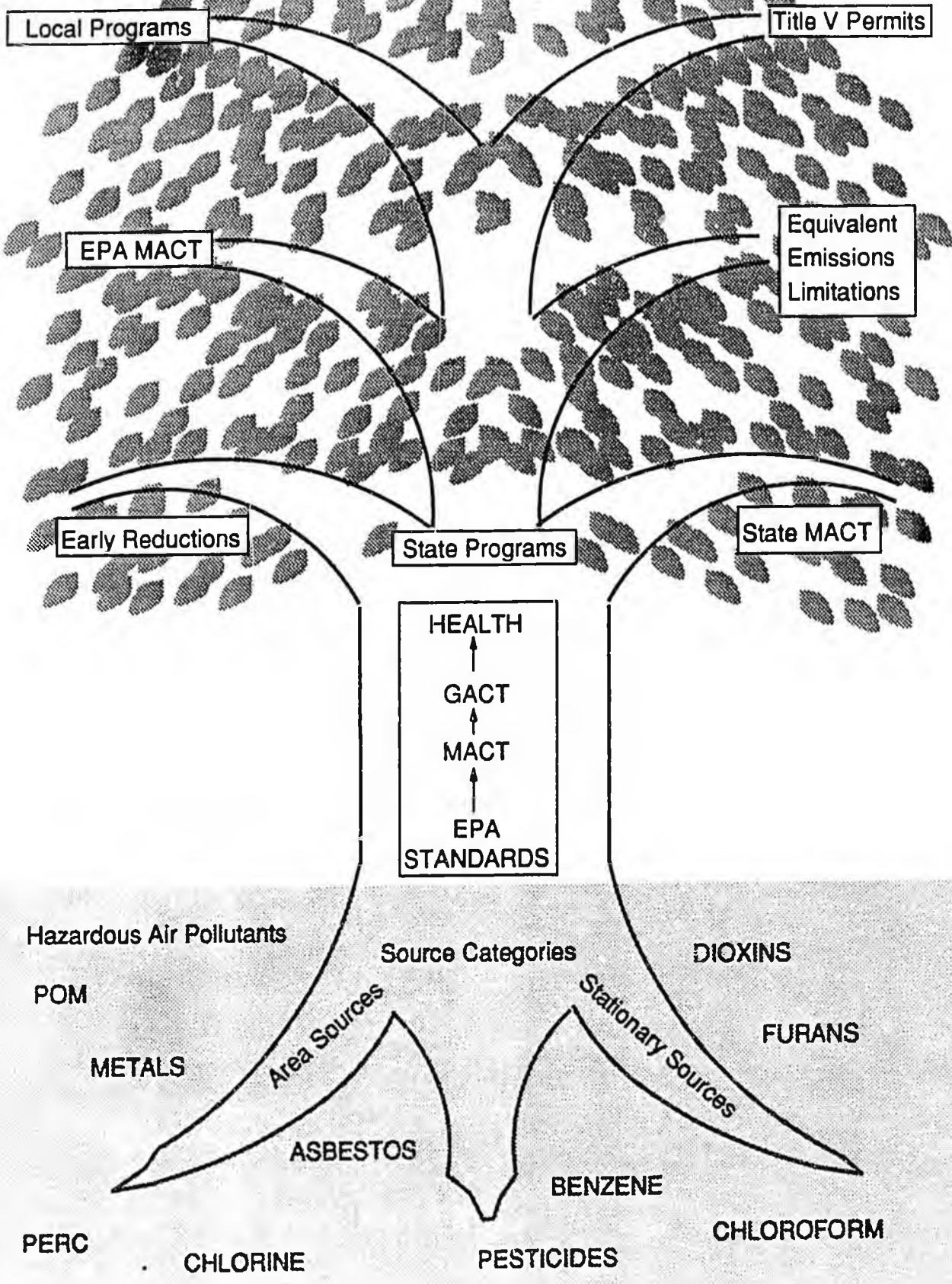
# Clean Air Act Permit Process



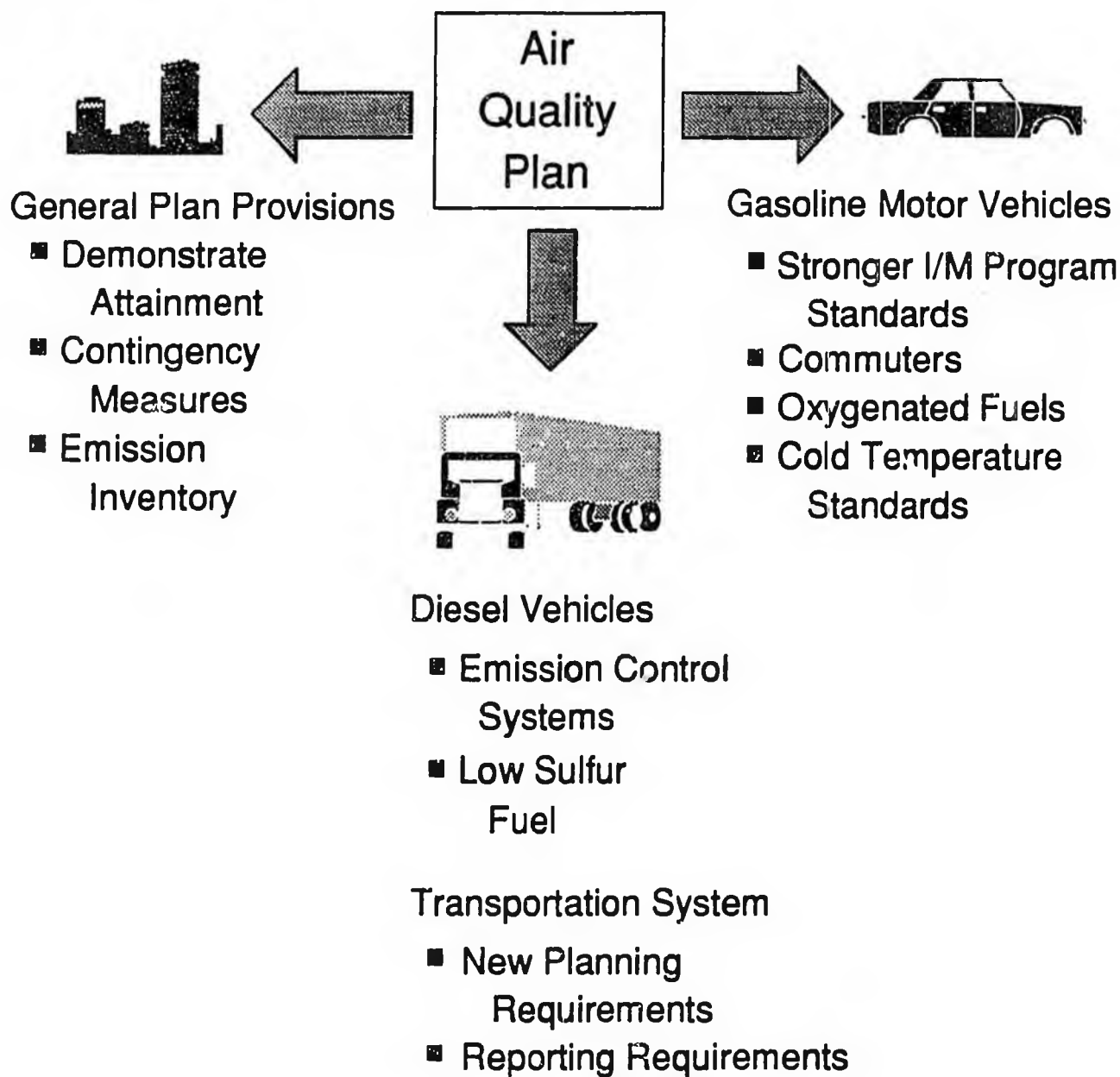
## **TITLE III SUMMARY (Hazardous Air Pollutants)**

- The Clean Air Act listed 190 Hazardous Air Pollutants (HAPs) that must be regulated.
  
- EPA must periodically review and update this list.
  
- EPA must establish "Maximum Achievable Control Technology" (MACT) for major sources of these pollutants.
  
- MACT means:
  - \* for new sources -- "best of best"
  
  - \* for existing sources -- "average of the top 12% best controlled sources."
  
- Facilities may apply for a 6-year extension from MACT upon demonstration of a 90% early reduction (95% for particulates).

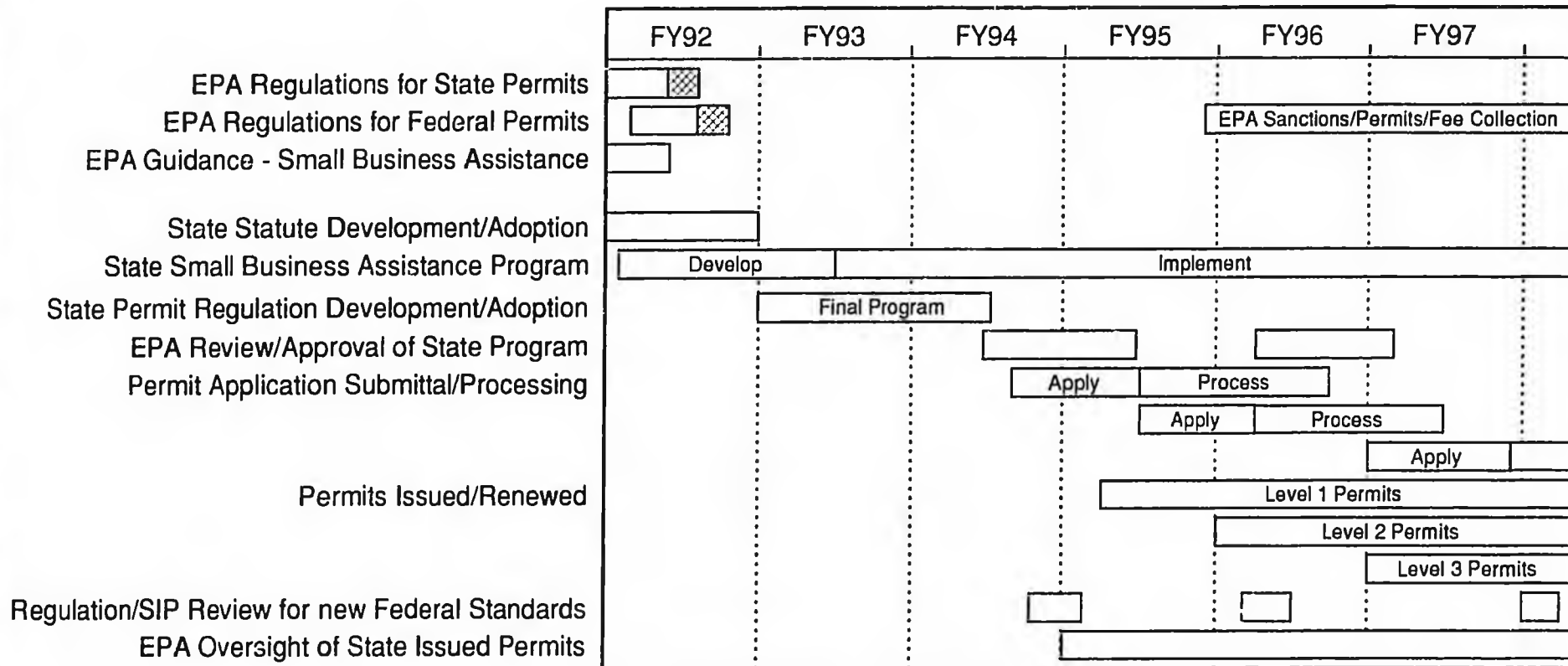
# CLEANER AIR



# Develop New Air Quality Plan



# Permit Program Time Table



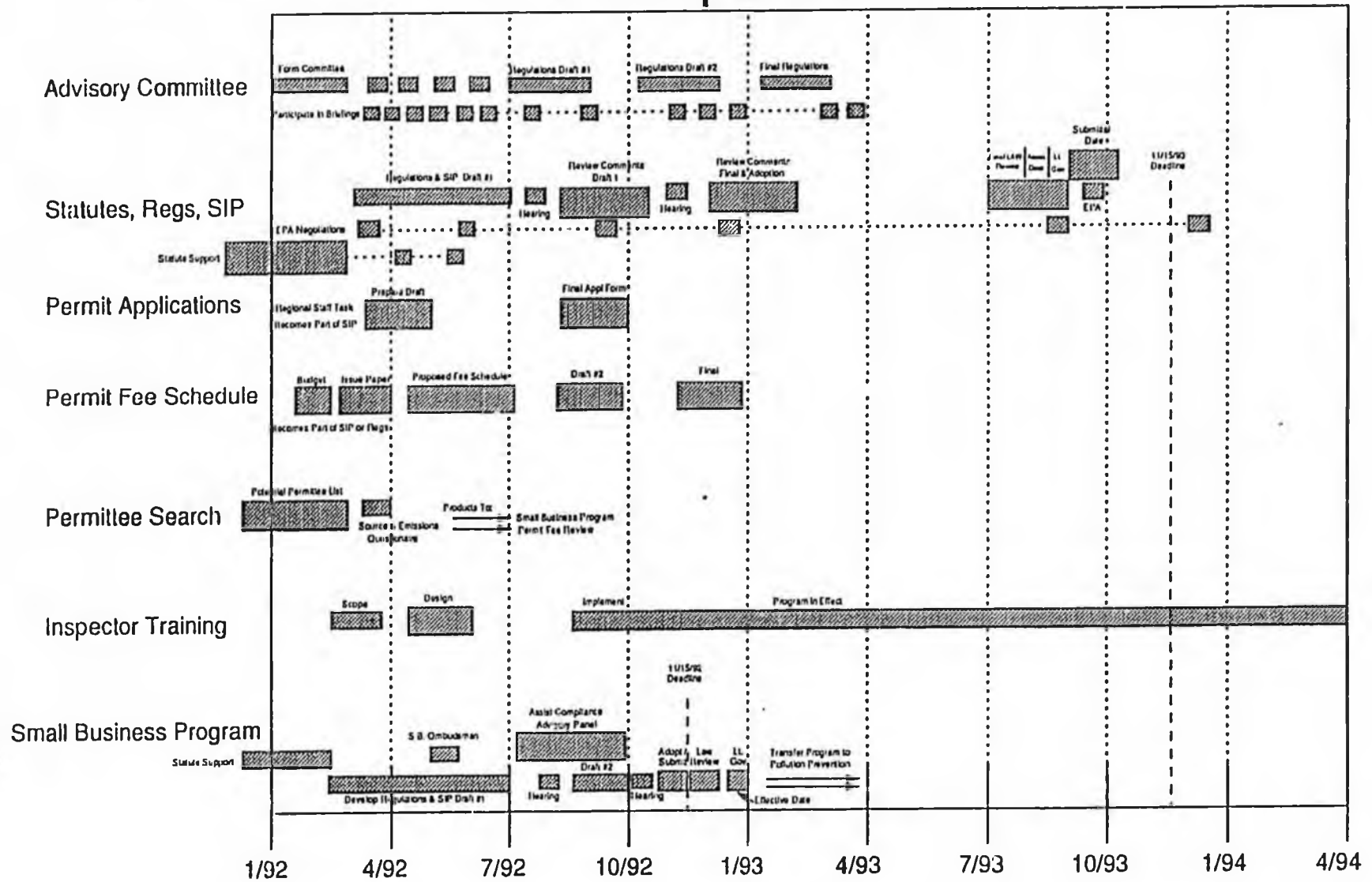
Level 1 Permits: Sources > 1000 TPY Aggregate Emissions & All PSD Permits

Level 2 Permits: Sources > 100 TPY, except General Permits

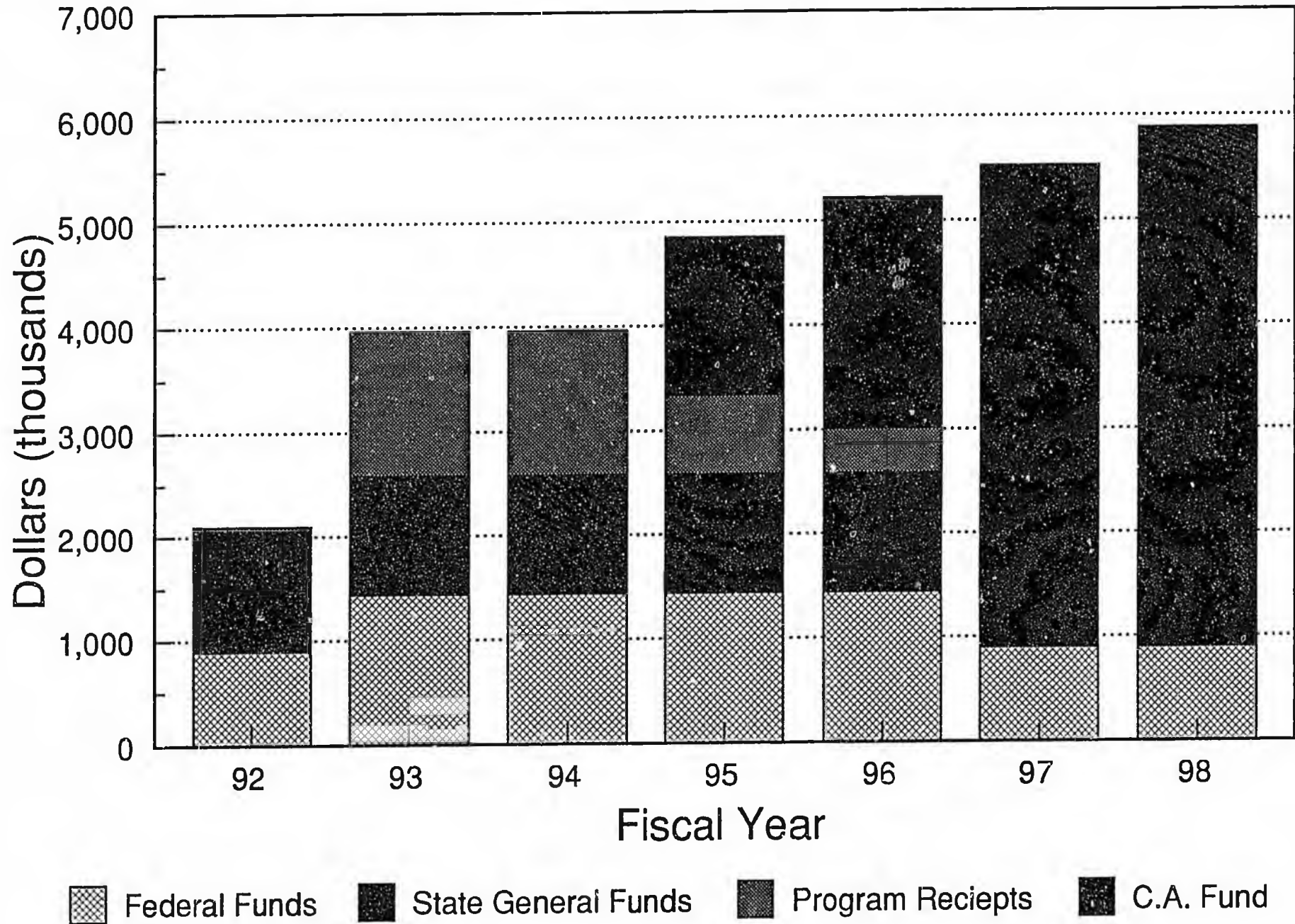
Level 3 Permits: All sources classified for General Permits

█ May be delayed up to 3 months due to federal Regulation Moratorium

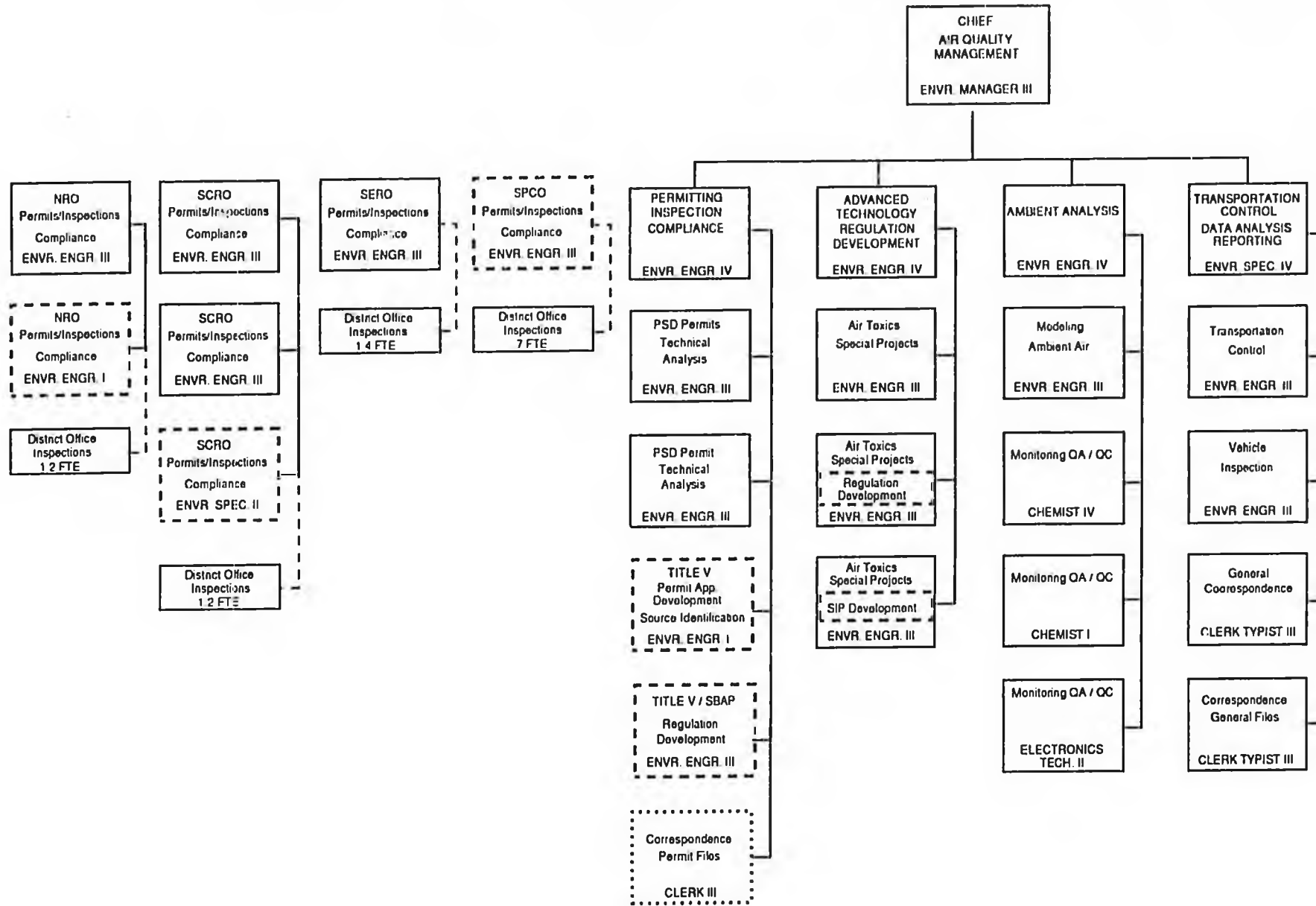
# CAA 90 Title V - State Operating Permit Program Development Phase



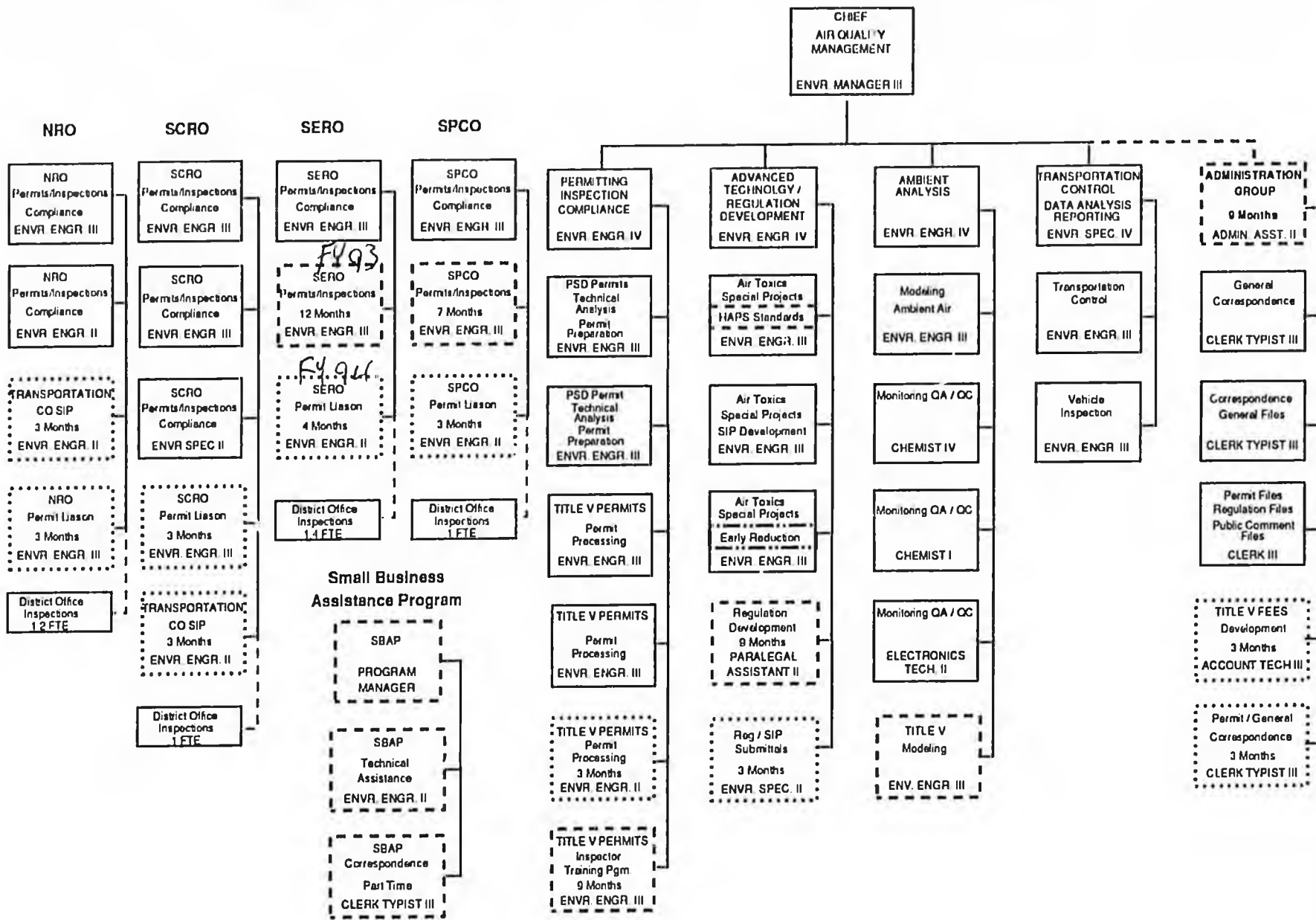
## Funding for Air Program FY 92 - FY 98



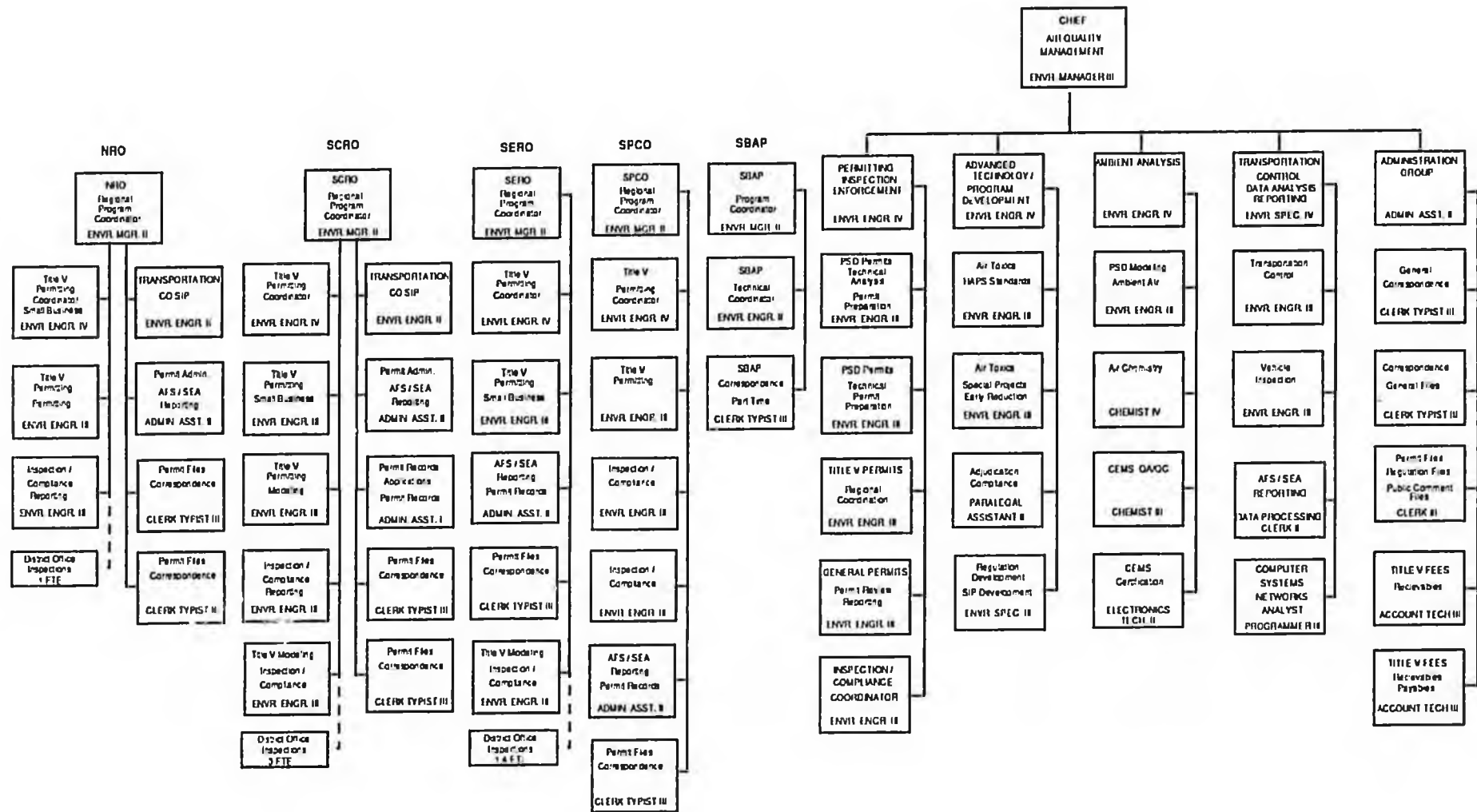
# FY 92 Implementation Plan - Projected Staff



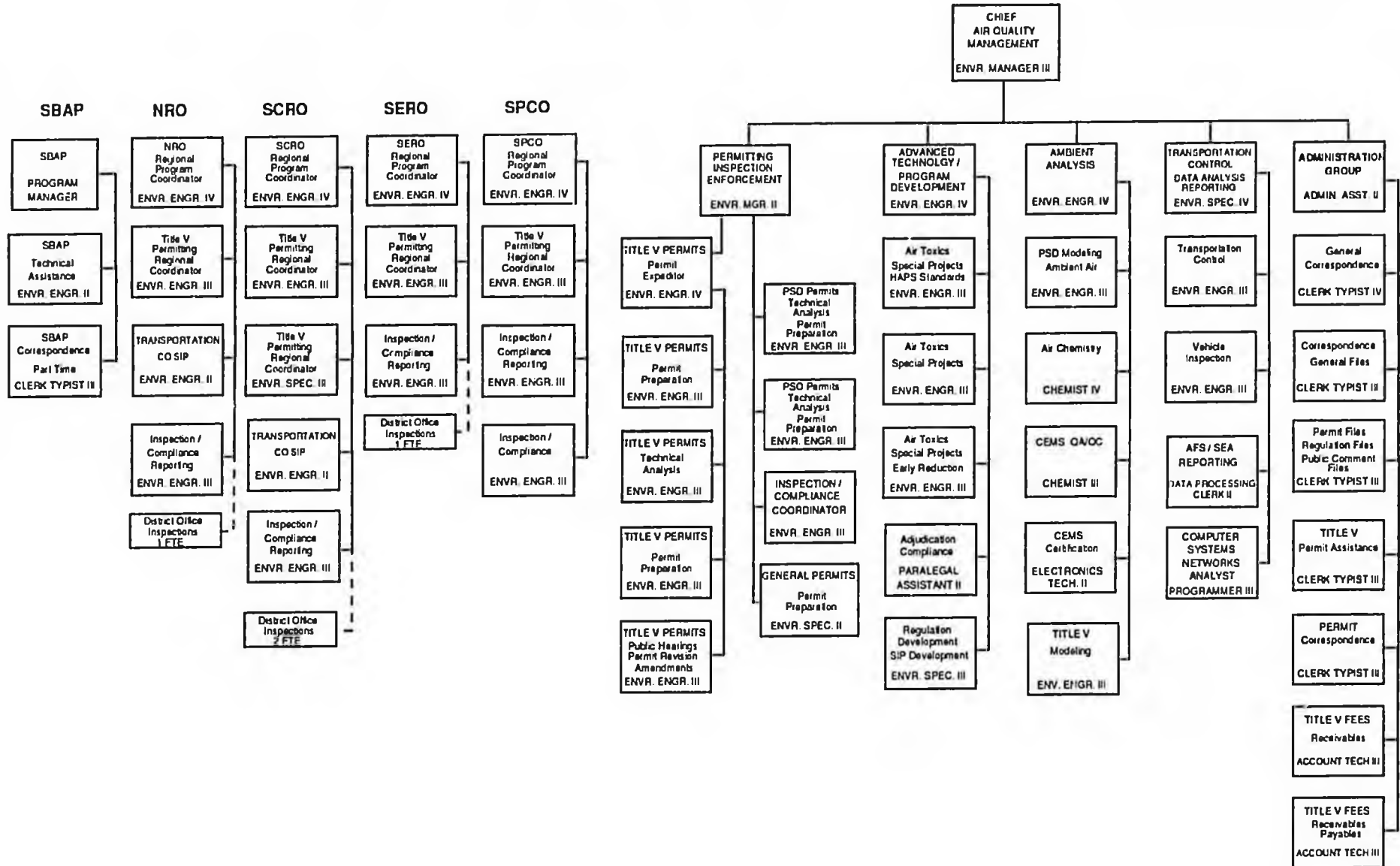
# FY 93/94 Implementation Plan - Planned Staff



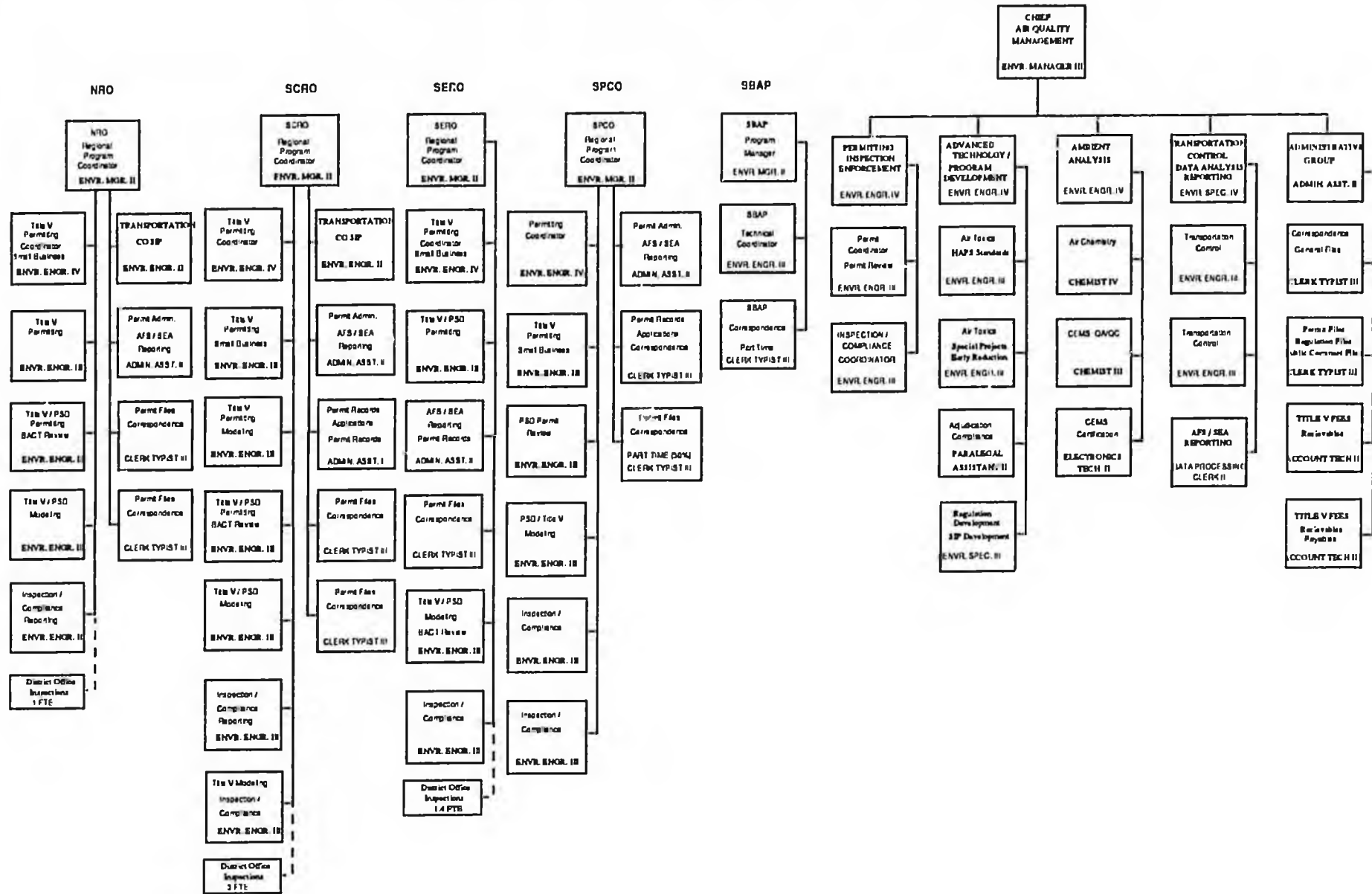
# FY 96 ORGANIZATION - REGIONAL TITLE V PERMITTING



# FY 96 ORGANIZATION - CENTRALIZED PERMITTING



# FY 96 ORGANIZATION - REGIONAL TITLE V AND PSD PERMITTING



**DETERMINATION OF STAFFING REQUIREMENTS  
Continuing Title V Permit Program**

In order to determine the staffing requirements to meet the obligations of a continuing Title V permit program, an analysis of current and future staffing requirements was undertaken.

Jurisdiction for Alaskan Air Quality Control is coordinated through the Central Office (CO) and four regional offices: Northern Regional Office (NRO), SouthCentral Regional Office (SCRO), SouthEast Regional Office (SERO), and the State Pipeline Coordinator's Office (SPCO). Currently, the Regional offices conduct inspection and enforcement activities, and write the State's Air Quality Control Permits. The Central Office coordinates the activities of the Regional Office, and does PSD permitting.

**GENERAL**

The first step to determine staffing requirements was to evaluate currently permitted sources. These sources were then categorized into two groups: "Major" and "Minor". These are not the EPA classifications of major and minor emitting facilities. Rather, "Major" refers to facilities which were permitted under PSD provisions or whose emissions are greater than 500 tons per year (TPY). The "Minor" category encompasses all other permitted sources.

<b>Current Situation</b>	<b>NRO</b>	<b>SCRO</b>	<b>SPCO</b>	<b>SERO</b>	<b>TOTALS</b>
Number of current Permits	32	66	27	16	141
Major Permits - PSD or >500 tpy	12	38	24	12	86
Minor Permits - PSD Avoid or <500 tpy	20	28	3	4	55

Next, an estimation of the number of permitted sources after the Title V program was made. This was derived from the following assumptions:

- 1) an estimation of the number of previously permitted facilities, which were "grandfathered" out of the permit program in the early '80s.
- 2) an estimate of the number of new classifications which will require permitting, such as NSPS sources and NESHAP sources.
- 3) an evaluation of the facilities which are currently permitted, to classify applicable sources as "Major" or "Minor" after the facilities undertake emission reductions to minimize the Title V permit fees.

One provision in the Act which might be beneficial to any permitting authority is the ability to issue General Permits. General Permits may be issued to a group of narrowly defined, similar sources. With careful definition, it may be possible to establish General Permit categories which include up to 50% of a State's minor permits.

Therefore, two scenarios are possible, which, for this analysis, are labeled **Type A** - General Permits are not possible for these Minor sources, and **Type B** - 50% of the projected Minor Sources can be permitted with General Permits.

<b>Projected Situation</b>	<b>NRO</b>	<b>SCRO</b>	<b>SPCO</b>	<b>SERO</b>	<b>TOTALS</b>
Number of Projected Permits	167	243	37	108	555
Major	60	99	29	46	234
Minor - Type A program	107	144	8	62	321
Minor - Type B program	53	72	8	31	164
General Permits - Type B program	54	72	0	31	157

### **INSPECTIONS**

One task of the Title V permitting program is facility inspection. This task will be the responsibility of the Regional Offices. Differences in facility composition and distance from the Regional Offices result in a variation in time required for each office to perform a single inspection.

<b>Work days reqd -Major Source Inspection</b>	<b>NRO</b>	<b>SCRO</b>	<b>SPCO</b>	<b>SERO</b>
Travel	1.75	1.5	1.5	1.5
On-site	1.0	1.0	1.0	1.0
Reporting	1.0	1.0	1.0	1.0
<b>Total - each major source Inspection</b>	<b>3.75</b>	<b>3.5</b>	<b>3.5</b>	<b>3.5</b>

<b>Work days reqd -Minor Source Inspection</b>	<b>NRO</b>	<b>SCRO</b>	<b>SPCO</b>	<b>SERO</b>
Travel	1.0	.75	.75	.75
On-site	0.5	0.5	0.5	0.5
Reporting	0.5	0.5	0.5	0.5
<b>Total - each minor source Inspection</b>	<b>2.0</b>	<b>1.75</b>	<b>1.75</b>	<b>2.0</b>

Next, the number of projected permits was multiplied by the appropriate number of days to determine the number of days per year for facility inspections. The time required for Central Office inspection review was also calculated, based on 8 inspection reviews per person per day. It was also assumed that if there was a General Permit program, then 10% of the General Permits issued would be audited per year, and that General Permit facility inspections take as long as Minor source inspections.

<b>Work days required annually - Inspections</b>	<b>NRO</b>	<b>SCRO</b>	<b>SPCO</b>	<b>SERO</b>	<b>CO (Review)</b>
Major	225	346.5	101.5	161	111
Minor - Type A program	214	252	14	124	84
Minor - Type B program	106	126	14	62	43
General Permits (10% auditing)	10	14	0	8	4

Conversion from work days to Full Time equivalent Employees (FTE) was made on the assumption that 1 FTE = 200 work days.

<b>Total FTE required</b>	<b>NRO</b>	<b>SCRO</b>	<b>SPCO</b>	<b>SERO</b>	<b>CO</b>
Inspections - Type A program	2.2	3.0	0.6	1.4	1.0
Inspections - Type B program	1.7	2.4	0.6	1.2	0.8

### **TITLE V PERMIT RENEWALS**

The next step is to determine the time required to process Title V permit renewals. The number of projected permits is reiterated here.

<b>Projected Permits</b>	<b>NRO</b>	<b>SCRO</b>	<b>SPCO</b>	<b>SERO</b>	<b>CO (Total)</b>
Number of Projected Permits	167	243	37	108	555
Major	60	99	29	46	234
Minor - Type A program	107	144	8	62	321
Minor - Type B program	53	72	8	31	164
General Permits - Type B program	54	72	0	31	157

The first assumption is that one-fifth of all Title V permits are renewed annually. The second assumption was that one person in the Regional Offices can process 20 permits annually, and that one person in the Central Office could process 25 permits annually. The increased personal capacity of the Central Office program is derived from expected gains in efficiency due to task-directed processing.

<b>Number of Permits Renewed Annually</b>	<b>NRO</b>	<b>SCRO</b>	<b>SPCO</b>	<b>SERO</b>	<b>CO</b>
Major	12	20	6	9	47
Minor - Type A program	21	29	2	12	64
Minor - Type B program	11	14	2	6	33
General Permits	11	14	0	6	31

<b>Total FTE required</b>	<b>NRO</b>	<b>SCRO</b>	<b>SPCO</b>	<b>SERO</b>	<b>CO</b>
Permit Renewal processing-Type A program	1.7	2.5	0.4	1.1	4.4
Permit Renewal processing-Type B program	1.4	2.1	0.4	0.9	4.0

**PERMIT REVISIONS**

A number of sources will seek permit modifications, minor permit amendments, and administrative permit amendments, which would allow operational change, or revision of facility information. A conservative estimate based on past performance within each region provides the following estimate:

<b>Permit Revisions</b>	<b>NRO</b>	<b>SCRO</b>	<b>SPCO</b>	<b>SERO</b>	<b>CO</b>
Permit modifications	3	5	5	3	16
Minor Amendments	4	5	3	2	14
Administrative Amendments	12	20	6	9	47
<b>Total FTE required</b>					
Permit Revisions - Type A or B	0.6	0.7	0.4	0.3	1.1

**PSD PERMITTING**

In addition to Title V permitting, a number of sources will seek PSD permits. A PSD permit is required to construct new facilities, or to make major modifications to an existing facility, such as adding new air pollutant emitting equipment. Currently, PSD review is conducted by the Central Office. An estimate, based on past applications to the Central Office and each region, provides the following:

<b>PSD Permits</b>	<b>NRO</b>	<b>SCRO</b>	<b>SPCO</b>	<b>SERO</b>	<b>CO</b>
Number of Projected PSD Permits	1	2	3	1	7
FTE required - PSD Permit processing	0.5	1.0	1.5	0.5	2.0

**OTHER ACTIVITIES**

In addition to Title V permitting, other activities are required. The three most significant are: Facility Operating Report reviews, compliance related activities, and non-Title V permitting (such as Open burn approvals and Flare permits).

<b>Other Activities</b>	<b>NRO</b>	<b>SCRO</b>	<b>SPCO</b>	<b>SERO</b>	<b>CO</b>
Non-Title V permits (Flare, Open Burn, etc.)	14	17	11	14	0
Compliance related	24	15	40	31	12
Number of Operating Report Reviews					
Type A program	217	342	64	154	100(Audit)
Type B program (10% auditing of GPs)	173	271	60	123	100(Audit)
<b>Total FTE required</b>					
Other Activities -Type A	0.8	1.2	0.7	0.8	0.3
Other Activities -Type B	0.8	1.1	0.7	0.8	0.3

**SUMMARY**

With these calculations, it is now possible to determine the FTEs required for a continuing Title V permit program. The calculations are summarized below:

<b>Total FTE required - Type A program</b>	<b>NRO</b>	<b>SCRO</b>	<b>SPCO</b>	<b>SERO</b>	<b>CO</b>
Inspections	2.2	3.0	0.6	1.4	1.0
Permit Renewal processing	1.7	2.5	0.4	1.1	4.4
Permit Revisions	0.6	0.7	0.4	0.3	1.1
PSD Permit processing	0.5	1.0	1.5	0.5	2.0
Other Activities	0.8	1.2	0.7	0.8	0.3
<b>Total FTE required - Type B program</b>	<b>NRO</b>	<b>SCRO</b>	<b>SPCO</b>	<b>SERO</b>	<b>CO</b>
Inspections	1.7	2.4	0.6	1.2	0.8
Permit Renewal processing	1.4	2.1	0.4	0.9	4.0
Permit Revisions	0.6	0.7	0.4	0.3	1.1
PSD Permit processing	0.5	1.0	1.5	0.5	2.0
Other Activities	0.8	1.1	0.7	0.8	0.3

Currently, three alternatives are being evaluated: Central Office Permitting, Regional Office Title V permitting and Regional Office permitting for Title V and PSD. For the Central Permitting case, the Regional Offices will still be responsible for two categories: Inspections, and Other Required Activity. The Central Office will have the responsibility for Title V and PSD permit processing and revision, and oversight responsibilities for inspections and other activities.

<b>Total FTE - Central Permitting</b>	<b>NRO</b>	<b>SCRO</b>	<b>SPCO</b>	<b>SERO</b>	<b>CO</b>
Type A program	3.0	4.2	1.3	2.2	8.8
Type B program	2.5	3.5	1.3	2.0	8.2

For the case of Regional Office Title V Permitting, the Regional Offices will still be responsible for Inspections, and other required activity, and will have authority for Title V permit processing and revision. The Central Office will have the responsibility for PSD permit processing and revision, and oversight responsibilities in all other areas.

<b>Total FTE - Regional Title V Permitting</b>	<b>NRO</b>	<b>SCRO</b>	<b>SPCO</b>	<b>SERO</b>	<b>CO</b>
Type A program	5.3	7.4	2.1	3.6	5.5
Type B program	4.5	6.3	2.1	3.2	5.1

For the case of Regional Office Title V and PSD Permitting, the Regional Offices will be responsible for Inspections, and other required activity, and will have authority for Title V and PSD permit processing and revision. The Central Office will have oversight responsibilities for all areas.

<b>Total FTE-Regional Title V &amp; PSD Permits</b>	<b>NRO</b>	<b>SCRO</b>	<b>SPCO</b>	<b>SERO</b>	<b>CO</b>
Type A program	5.8	8.4	3.6	4.1	3.5
Type B program	5.0	7.3	3.6	3.6	3.1

# FY 92 PERMIT DEVELOPMENT

TASK	SKILLS	EFFORT
- Revise statutes	Ass't AG; Paralegal Ass't; Env. Engr; DEC Mgmt; Clerical	.25 FTE (.15 DOL)
- Identify/Assist New Permittees	Env. Engr (CO & RO); Clerical	.50
- Cooperative Participation for Regulation Development	Env. Engr (CO & RO); Clerical	1.50
- Prepare Draft Regulations	Ass't AG; Paralegal Ass't; Env. Engr; Clerical	
1. Small Business Assistance		(.20 DOL) .50
2. Permits <sup>1</sup>		(.10 DOL) .75
- Begin Drafting of Air Quality Plan	Env. Engr; Clerical	.25
- Re-directed Tasks		
1. Central Office Assistance for Regional Offices		.75
2. Air Toxics Development		
3. Compliance Reporting <sup>1</sup>		.20
4. District Office Support to Regional Offices		.50
Summary		5.20 FTE
Adjustments via Contracts		< .50>
NET INCREASE FY92		4.75 FTE

Notes:

<sup>1</sup> These tasks can be conducted through contracts.

# FY 93 PERMIT DEVELOPMENT

TASK	SKILLS	EFFORT
- Cooperative Participation for Regulation Development	Env. Engr (CO & RO); Clerical	2.00 FTE
- Prepare Draft and Final Regulations	Ass't AG; Paralegal Ass't; Env. Engr.	.75 (.20 DOL)
- Prepare Draft and Final Air Quality Control Plan	Env. Engr (CO & RO); Clerical	2.75
- Negotiate with EPA on Regulations and Control Plan	Ass't AG; Env. Engr; ADEC Mgmt.	.30 (.10 DOL)
- Initiate Small Business Assistance Program	Env. Engr; Clerical	1.00
- Provide Assistance to Permit Applicants	Env. Engr (RO & CO); Clerical	1.25
- Establish Fiscal System <sup>1</sup> for Permit Fee Programs	Acct. Tech.	0.25
- Begin Hazardous Air Pollutant Standards and Reduction Programs	Env. Engr.	0.25
- Begin Review of Permit Applications	Env. Engr.	0.75
SUM: All CAA Permit Development		9.3 FTE
<New Positions FY 92>		<6.0>
<Potential New Contractual>		<.25>
NET INCREASE FY 93		3.0 FTE

Notes:

<sup>1</sup>These tasks can be conducted through contracts.

## FY 94 TRANSITION PHASE

TASK	SKILLS	EFFORT
- Complete Adoption of Regs and Control Plan	Ass't AG; Paralegal Ass't; Env. Engr.	(.20 DOL) .20
- Complete Negotiations with EPA	Env. Engr; Paralegal Ass't	.25
- Initiate Level II Permit Applications	Env. Engr. (CO & RO); Clerical	.50
- Provide Permit Assistance to Levels I and II Applicants	Env. Engr; Clerical	4.00
- Review and Issue Level I Permits	Env. Engr; Clerical; Paralegal Ass't	5.00
- Train and Implement Regional Permit Liaisons	Env. Engr.	.75
- Continue Small Business Assistance	Env. Spec.	1.0
- Revise Regulations and Control Plan for Hazardous Air Pollutants NSPS	Ass't AG; Env. Engr; Paralegal Ass't	.75 (.15 DOL)
- Implement Permit Fee Collection System <sup>1</sup>	Contractor; Admin. Ass't	1.75
- Enhance Compliance Reporting for New Permits <sup>1</sup>	Contractor; Env. Engr; Admin. Ass't.	1.25
- Begin Inspection and Compliance Certification	Env. Engr (CO & RO); Clerical	1.25
SUM: All CAA Permit Development <New Positions FY 92 and 93> <Contractor Assistance> Net Increase FY 94		17.10 FTE <11.00> <2.20> 4.0 FTE

Notes:

<sup>1</sup> These tasks can be conducted through contracts.

## IMPLEMENTATION PLAN

FISCAL YEAR	FTE
92	28.0
92 (rev.)	34.0
93	53.0
94	53.0

## OPERATIONAL PLAN

OPTION	FTE
Central Office Permitting	58.5
Regional Office Permitting	65.4
Regional Permitting and PSD	69.4

## Interim Program Receipts Matrix

Facility Category	Number Permitted	Cost each	Total Receipts
Incinerators	6	\$ 3,000	\$ 18,000
Electric Utilities < 500 tpy	14	\$ 3,000	\$ 42,000
Electric Utilities 500-2000 tpy	4	\$ 8,000	\$ 32,000
Electric Utilities 2000-4000 tpy	2	\$ 25,000	\$ 50,000
Electric Utilities > 4000 tpy	1	\$ 50,000	\$ 50,000
Asphalt plants	22	\$ 3,000	\$ 66,000
Soil Remediation Units	12	\$ 6,000	\$ 72,000
Fuel Burning < 500 tpy	23	\$ 3,000	\$ 69,000
Fuel Burning 500-2000 tpy	19	\$ 9,000	\$ 171,000
Fuel Burning 2000-4000 tpy	7	30,000	\$ 210,000
Fuel Burning > 4000 tpy	9	60,000	\$ 540,000
		Total	<hr/> \$ 1,320,000

**SB - 383**

**ALASKA AIR QUALITY STATUTES**

**SECTION-BY-SECTION ANALYSIS**

Prepared by Alaska Department of Environmental Conservation  
2/6/92

**SECTION 1. PURPOSE**

This section is self explanatory

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

**AS 46.14.010 REGULATION AUTHORITY; EMISSION CONTROL STANDARDS**

**OBJECTIVE:**

This section provides basic powers to the department to control air pollution sources and activities by establishing "out-of-stack" emission

**FEDERAL REQUIREMENT:**

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

**STATE INTENT & EXPLANATION:**

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

standards for health protection. Sub-section (a) incorporates the language from the existing AS 46.03.140 proposed for repeal. Subsection (b) is new language to clarify authorities of the department to establish emission standards based upon either a) the need to prevent excessive ground level concentrations of an air contaminant or b) the use of a pollution control technology that is reasonably available and economically justifiable for a particular source or class of air pollution sources to use.

CAA Section 112(j) specifies that state permit programs must incorporate federal emission limits or impose equivalent emission limits if EPA does not promulgate an emission limit for a type of source for which EPA is scheduled to do so under the Clean Air Act.

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

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

#### AS 46.14.020 CLASSIFICATION AND REPORTING

**OBJECTIVE:**

This section incorporates the existing language from AS 46.03.150 (proposed for repeal) to

**FEDERAL REQUIREMENT:**

CAA Section 504 presents the minimum contents of a permit which includes reporting of

**STATE INTENT AND EXPLANATION :**

Retain existing authorities and meet new minimum federal requirement.

provide authority to classify facilities and sources causing emissions of air contaminants as needed to ensure responsible and efficient management of air pollution. Subsection (b) provides authority to require reporting of information from those who emit air contaminants.

Information to assess compliance by the facility with the terms of the permit.  
CAA Section 503 discusses when permit applications are required to be submitted to the permitting agency.

Existing authorities enable to department to require the submittal of information regarding air emissions and processes that cause air emissions. This authority exists regardless of the need for an entity to obtain an air permit. The authority needs to be retained to enable the department to perform its most basic function of protecting air resources by having knowledge concerning activities that result in emissions of air contaminants.

#### **AS 46.14.200 PERMITS FOR CONSTRUCTION, MODIFICATION, OR OPERATION PROHIBITED**

##### **OBJECTIVE:**

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

##### **FEDERAL REQUIREMENT:**

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

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

##### **STATE INTENT & EXPLANATION:**

The state intends to execute a permit program that meets the minimum requirements of the Clean Air Act. Such a program must greatly expand the number of permits issued by the state because of the reduced minimum facility size that is now subject to permit requirements. The state generally intends to exempt any facility from permit requirements if a federal exemption is authorized unless

there is strong basis of need, from the state's perspective, to retain the permit as a mechanism to contain or minimize an air pollution problem.

## AS 46.14.205 PERMIT APPLICABILITY

### OBJECTIVE:

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

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

### FEDERAL REQUIREMENTS:

Identical references as noted for 46.14.200

### STATE INTENT & EXPLANATION:

The intent is to implement a permit program that satisfies the minimum federal requirements but is also tailored as much as possible to meet Alaska's unique needs.

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

Please note the importance and special meaning of the term "major facility" used in subsection (b) and defined in section 46.14.900.

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

operate would be issued approximately 60-90 days, later after the draft permit undergoes the required federal review.

**AS 46.14.210 EMISSION CONTROL PERMIT REGULATIONS**

**OBJECTIVE:**

This section directs the department to adopt regulations which include all elements of the permit program expressly required by the Clean Air

**FEDERAL REQUIREMENTS:**

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

**STATE INTENT & EXPLANATION:**

The intent is to meet the minimum federal requirements and to create a mechanism to avoid the issuance of permits to those facilities which