

**ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672**  
**7638 SENATE RESOURCES**

Act. Sub-section (b) incorporates the authority from the existing AS 46.03.160(g) (proposed for repeal).

AS 46.14.210(a)(1): see CAA Section 502(b), (b)(1);  
AS 46.14.210(a)(2): see CAA Section 502(b)(2), 503(b)(1);  
AS 46.14.210(a)(3): see CAA Section 502(b)(6);  
AS 46.14.210(a)(4): see CAA Section 504(a), (b), and (c), 503(b)(2), 40 CFR 70.6(a)(iv)(A), (B)(Proposed);

AS 46.14.210(a)(5): see CAA Section 502(b)(3)(A);  
AS 46.14.210(a)(6): see CAA Section 502(b)(5)-(10);  
AS 46.14.210(a)(7): no federal requirement. This is a state initiative.

can contain their emissions below the applicable levels through voluntary process or operational restrictions.

**AS 46.14.215 STATE PLAN**

**OBJECTIVE:**

This section identifies the State Air Quality Control Plan and designates that the department will act in the Governor's behalf, with respect to

**FEDERAL REQUIREMENTS:**

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

**STATE INTENT & EXPLANATION:**

The State Air Quality Control Plan is the resource management document that identifies the specific methods to be employed

the plans. All actions taken by the department must conform with the plan.

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

**AS 46.14.220 TIME FOR SUBMISSION OF PERMIT APPLICATIONS**

**OBJECTIVE:**

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

**FEDERAL REQUIREMENTS:**

CAA Section 503(a),and (c)

**STATE INTENT & EXPLANATION:**

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

**AS 46.14.225 ADMINISTRATIVE ACTIONS REGARDING PERMITS**

**OBJECTIVE:**

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

**FEDERAL REQUIREMENTS:**

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

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

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

**STATE INTENT & EXPLANATION:**

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

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

**AS 46.14.230 REVIEW OF PERMIT ACTION**

**OBJECTIVE:**

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

**FEDERAL REQUIREMENTS:**

CAA Section 502(b)(6)

**STATE INTENT & EXPLANATION:**

Under the Clean Air Act, the state must provide an opportunity for an aggrieved party to obtain judicial

review of a permit action. The state desires to retain the currently existing administration adjudication process as a first step for an aggrieved party. The administrative adjudication process is less costly and more responsive for a party and therefore a more efficient first step remedy. The opportunity for judicial review is available after adjudatory review.

#### AS 46.14.235 SINGLE PERMIT

##### OBJECTIVE:

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

##### FEDERAL REQUIREMENTS:

CAA Section 502(c)

##### STATE INTENT & EXPLANATION:

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

AS 46.14.240 GENERAL OPERATING PERMITS

OBJECTIVE:

Incorporation of this elective provision within federal law should be extremely beneficial in accomplishing timely issuance of air permits for selected facility categories.

FEDERAL REQUIREMENTS:

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

STATE INTENT & EXPLANATION:

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

**AS 46.14.245 OBJECTION BY THE ADMINISTRATOR**

**OBJECTIVE:**

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

**FEDERAL REQUIREMENTS:**

CAA Section 505(b)

**STATE INTENT & EXPLANATION:**

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

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

**OBJECTIVE:**

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

**FEDERAL REQUIREMENTS:**

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

**STATE INTENT & EXPLANATION:**

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

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

**AS 46.14.255 PENALTY AND INTEREST FOR NONPAYMENT**

**OBJECTIVE:**

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

**FEDERAL REQUIREMENTS:**

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

**STATE INTENT & EXPLANATION:**

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

**AS 46.14.260 CLEAN AIR PROTECTION FUND; SPECIAL ACCOUNT**

**OBJECTIVE:**

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

**FEDERAL REQUIREMENTS:**

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

**STATE INTENT & EXPLANATION:**

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

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

**Sec. 46.14.265 DURATION OF OPERATING PERMITS**

**OBJECTIVE:**

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

**FEDERAL REQUIREMENTS:**

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

**STATE INTENT & EXPLANATION:**

Currently air permits are issued for up to 5 years. It is expected that the same policies would be retained

AS 46.14.265(b) ---- see  
CAA 503(d)

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

#### AS 46.14.270 REOPENING OF PERMITS

**OBJECTIVE:**

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

**FEDERAL REQUIREMENTS:**

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

**STATE INTENT & EXPLANATION:**

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

with the federal requirement to provide for a re-opener in these limited instances.

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

**OBJECTIVE:**

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

**FEDERAL REQUIREMENTS:**

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

**STATE INTENT & EXPLANATION:**

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

**Sec. 46.14.280 FEDERAL TERMINATION, MODIFICATION, OR REVOCATION AND REISSUANCE OF PERMITS**

**OBJECTIVE:**

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

**FEDERAL REQUIREMENTS:**

CAA Section 505(e)

**STATE INTENT & EXPLANATION:**

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

**AS 46.14.285 TEMPORARY OPERATIONS**

**OBJECTIVE:**

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

**FEDERAL REQUIREMENTS:**

CAA Section 504(e)

**STATE INTENT & EXPLANATION:**

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

**AS 46.14.290 PERMIT AS A SHIELD**

**OBJECTIVE:**

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

**FEDERAL REQUIREMENTS:**

CAA Section 504(f)

**STATE INTENT & EXPLANATION:**

The intent is to comply with federal requirement, but, include certain exceptions to the shield that must

be retained to protect public health and the environment during unanticipated catastrophic events.

#### AS 46.14.292 TIMELY AND COMPLETE APPLICATION AS A SHIELD

**OBJECTIVE:**

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

**FEDERAL REQUIREMENTS:**

CAA Section 503(d)

**STATE INTENT & EXPLANATION:**

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

#### AS 46.14.295 ADMINISTRATIVE PENALTIES FOR AIR POLLUTION

**OBJECTIVE:**

This section would create a mechanism for the department to assess penalties administratively for violations of this chapter, regulations adopted under this

**FEDERAL REQUIREMENTS:**

none - see explanation for more detail

**STATE INTENT & EXPLANATION:**

Although there is no direct federal requirement, the Clean Air Act substantially enhances the enforcement authority of the U.S. Environmental Protection Agency.

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**OBJECTIVE:**

This section would create a mechanism for the department to assess penalties administratively for violations of this chapter, regulations adopted under this

**FEDERAL REQUIREMENTS:**

none - see explanation for more detail

**STATE INTENT & EXPLANATION:**

Although there is no direct federal requirement, the Clean Air Act substantially enhances the enforcement authority of the U.S. Environmental Protection Agency.

**AS 46.14.300 MOTOR VEHICLE POLLUTION**

**OBJECTIVE:**

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

**FEDERAL REQUIREMENTS:**

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

**STATE INTENT & EXPLANATION:**

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

**AS 46.14.400 DEVELOPMENT OF PROGRAM (SMALL BUSINESS ASSISTANCE PROGRAM)**

**OBJECTIVE:**

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

**FEDERAL REQUIREMENTS:**

CAA Section 507(a)

**STATE INTENT & EXPLANATION:**

Providing this assistance to small businesses affected by the Clean Air Act will reduce the financial burden upon these businesses, increase their knowledge and understanding of obligations placed

upon them by the Act and assist them in controlling and preventing release of air contaminants to the atmosphere. The small business assistance program is a required feature of any federally approved state permit program.

#### AS 46.14.410 SCOPE OF PROGRAM

##### OBJECTIVE:

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

##### FEDERAL REQUIREMENTS:

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

##### STATE INTENT & EXPLANATION:

This assistance program is to be viewed as a substantial aid to those entities that are least knowledgeable and least capable of coping with the technical, fiscal and legal provisions of the Clean Air Act. This section as drafted will provide this assistance to the greatest number of Alaska industries as possible. The federal definition of a small business for eligibility of this assistance is quite restrictive. This is so because of the congressional desire to contain cost of the assistance in recognition that the program is to be funded by the collected permit fees. The department has

suggested statutory language that will expand the definition of a small business as much as allowed under the Act to make this assistance available to a larger portion of our small businesses. Furthermore, language is suggested to enable yet an additional expansion of the service if the Legislature were to allocate additional monies to this activity from the general fund. Such monies may originate from the settlement of enforcement cases as discussed in AS 46.14.260(c).

**AS 46.14.420 POWER TO LIMIT PROGRAM**

**OBJECTIVE:**

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

**FEDERAL REQUIREMENTS:**

CAA Section 507(c)(3)

**STATE INTENT & EXPLANATION:**

The intent is to incorporate this elective provision into state law as described in federal law which will enable the state to exclude a small business facility or group of similar facilities from the assistance program. The facility or group will

be excluded only if it is determined by EPA, the U.S. Small Business Administration and the department that the facility or group, in light of its technical and financial capabilities, is not in need of the assistance provided by this program.

**AS 46.14.430 COMPLIANCE ADVISORY PANEL**

**OBJECTIVE:**

This section establishes an oversight panel to guide the small business assistance program and to report its findings to the EPA Administrator.

**FEDERAL REQUIREMENTS:**

CAA Section 507(e)

**STATE INTENT & EXPLANATION:**

This language has been drafted in recognition of the separation of powers criteria in Alaska law. It is possible that additional discussions and negotiations will need to occur with EPA to clarify if the proposed language satisfies the federal obligations.

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

**AS 46.14.500 PUBLIC RECORDS**

**OBJECTIVE:**

This section provides that documents in the department's possession are public records with very few exceptions (see - AS 46.14.510). This section is more expansive than existing public records laws in that this law recognizes fewer exceptions for process and production related information.

**FEDERAL REQUIREMENTS:**

CAA Section 503(e)

**STATE INTENT & EXPLANATION:**

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

**AS 46.14.510 CONFIDENTIALITY OF RECORDS**

**OBJECTIVE:**

This section identifies the criteria that must be met to exclude documents from being public records. The language incorporates the existing language in AS 46.03.180 (proposed for repeal) with some clarifications.

**FEDERAL REQUIREMENTS:**

CAA Section 503(e)

CAA Section 114(c)

**STATE INTENT & EXPLANATION:**

This language is intended to meet the federal requirements. In general, federal regulations allow more information to be held as confidential in comparison to existing Alaska law. The proposed language will not alter existing state law, except for the items specifically noted here. Language is proposed to address situations

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**OBJECTIVE:**

This section provides that documents in the department's possession are public records with very few exceptions (see - AS 46.14.510).

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

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

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**OBJECTIVE:**

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**FEDERAL REQUIREMENTS:**

CAA Section 503(e)

CAA Section 114(c)

**STATE INTENT & EXPLANATION:**

This language is intended to meet the federal requirements. In general, federal regulations allow more information to be held as confidential in comparison to existing Alaska law. The proposed language will not alter existing state law, except for the items specifically noted here. Language is proposed to address situations

when ambient monitoring and meteorological data can be considered confidential. This would protect the uncontrolled use of the collected data by entities that do not contribute to the cost of the data collection but would stand to benefit by its use in a reduced overall cost to themselves for preparation of a permit application.

**Sec. 46.14.520 LOCAL AIR QUALITY CONTROL PROGRAMS**

**OBJECTIVE:**

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

**FEDERAL REQUIREMENTS:**

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

**STATE INTENT & EXPLANATION:**

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

language establishes a vehicle for achieving this interagency program. Called a "cooperative agreement", this document will delineate the respective responsibilities of each agency and enable the department to approve the activities of the local program.

**AS 46.14.530 INADEQUACY OF LOCAL PROGRAM**

**OBJECTIVE:**

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

**FEDERAL REQUIREMENTS:**

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

**STATE INTENT & EXPLANATION:**

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

**AS 46.14.540 STATE AND FEDERAL AID**

**OBJECTIVE:**

The proposed language reflects to a large degree the existing language

**FEDERAL REQUIREMENTS:**

CAA Section 105 authorizes federal grants for air pollution control

**STATE INTENT & EXPLANATION:**

The proposed statute includes only minor changes to the existing

of AS 46.03.230 (proposed for repeal)

efforts implemented by state and local governments.

language. Although this provision of law is currently only used to a minor degree, it is anticipated that this may be executed on a much broader basis with the new permit program if some of the local governments desire to become partners in implementing the permit program. This statute would allow the state to provide all or a portion of the monies needed to carry out air permit functions by local government entities.

**AS 46.14.550 LIMITATION OF POWERS**

**OBJECTIVE:**

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

**FEDERAL REQUIREMENTS:**

no applicable federal citation

**STATE INTENT & EXPLANATION:**

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

**AS 46.14.560 RESPONSIBILITIES OF OWNERS AND OPERATORS**

**OBJECTIVE:**

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

**FEDERAL REQUIREMENTS:**

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

**STATE INTENT & EXPLANATION:**

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

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

**AS 46.14.900 DEFINITIONS**

**OBJECTIVE:**

This section defines terms used within the chapter.

**FEDERAL REQUIREMENTS:**

N/A

**STATE INTENT & EXPLANATION:**

Intent and explanation not necessary.

## SECTIONS 3 THROUGH 13

**OBJECTIVE:**

Amend: AS 28.10.041(a)(10)  
AS 28.10.423  
AS 29.35  
AS 29.35.200(b)  
AS 29.35.210(a)  
AS 29.35.210(b)  
AS 44.46.025(a)(2)  
AS 44.62.330(a)(44)  
AS 46.03.760(f)  
AS 46.03.765  
AS 46.03.780(a)

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

**FEDERAL REQUIREMENTS:**

N/A

**STATE INTENT & EXPLANATION:**

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

## SECTION 14 AMENDING AS 46.03.790(a)

**OBJECTIVE:**

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

**FEDERAL REQUIREMENTS:**

CAA Section 113(c)(2)

**STATE INTENT & EXPLANATION:**

The intent is to comply with federal  
requirements.

## SECTION 15 AMENDING AS 46.790 TO ADD (h)

### OBJECTIVE:

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

### FEDERAL REQUIREMENTS:

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

### STATE INTENT & EXPLANATION:

The intent is to comply with federal requirements.

## SECTIONS 16 THROUGH 18

### OBJECTIVE:

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

### FEDERAL REQUIREMENTS:

There is no applicable federal citation

### STATE INTENT & EXPLANATION:

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

## **SECTIONS 20 AND 21 AMEND AS 46.08.900(6) AND AS 46.09.900(4)**

### **OBJECTIVE:**

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

### **FEDERAL REQUIREMENTS:**

There is no applicable federal citation.

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

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

## **SECTION 22 AMENDS AS 46.35.200(4)**

### **OBJECTIVE:**

Amend AS 46.35.200(4) to incorporate air permits issued under Chapter 14.

### **FEDERAL REQUIREMENTS:**

There is no applicable federal citation.

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

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

## **SECTION 23**

### **OBJECTIVE:**

This section repeals existing statutes for air quality control.

### **FEDERAL REQUIREMENTS:**

There is no applicable federal citation

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

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

## **SECTION 24**

### **OBJECTIVE:**

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

### **FEDERAL REQUIREMENTS:**

There is no applicable federal citation

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

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

## SECTIONS 25 AND 26

### OBJECTIVE:

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

### FEDERAL REQUIREMENTS:

N/A

### STATE INTENT & EXPLANATION:

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

Motor Vehicle Manufacturers Association  
of the United States, Inc.

Thomas H. Hanna  
President and Chief Executive Officer

May 7, 1992

Representative Tom Moyer  
Alaska State Legislature  
Room 13-C, State Capitol  
Juneau, Alaska 99801-1182

Re: CS House Bill 377

Dear Representative Moyer:

In talking with the Department of Environmental Conservation, it is our understanding that your HB 377 will be the lead bill in the State Legislature to work toward the implementation of Alaska's clean air legislation.

The Motor Vehicle Manufacturers Association, particularly during this past several years, has been working with all the state legislatures with respect to their clean air programs. We want to be supportive of a program in which Alaska will be able to meet the federal Clean Air Act standards.

Relative to Article 3: Motor Vehicle Pollution Control Program, Section 46.14.300 already basically exists in current Alaska law as Section 46.03.190 of the Alaska Environmental Conservation Law. This section gives the Department of Environmental Conservation authority to implement almost whatever motor vehicle pollution control program they wish in order to meet Alaska's clean air standards, which could include California emissions standards. Although the language does not expressly authorize this authority to the Department, such a claim could be challenged.

We strongly recommend that section 46.14.300 be amended to include language which would require the Department to conduct a study if California emissions standards were to be adopted, and reported back to the Legislature prior to the implementation of such a program. It is also our recommendation that the Legislature continue to play a role of having legislative oversight on the implementation of any other motor vehicle pollution control program and fees for Alaska.

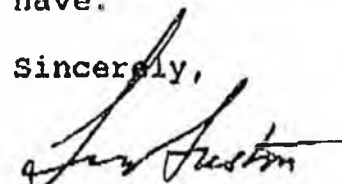
Representative Tom Moyer

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At the conclusion of the legislative session we would be more than happy to personally meet and work with the Department to discuss some of the specific programs they may have in mind.

Thank you very much for your consideration of such language in this section of the proposed bill and we would be happy to respond to any questions regarding this you may have.

Sincerely,



James W. Austin  
Public Affairs Manager  
Pacific Coast Region

JWA/eb

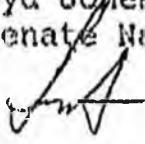
cc: Senator Lloyd Jones, Chairman,  
Senate Natural Resources Committee  
Members, Senate Natural Resources Committee  
Alaska Department of Environmental Conservation

## MEMORANDUM

MOTOR VEHICLE MANUFACTURERS ASSOCIATION  
1107 Ninth Street, Suite 1030  
Sacramento, California 95814  
916-444-3767

3 pages

TO: Senator Lloyd Jones  
Chairman, Senate Natural Resources Committee

FROM: Jim Austin 

DATE: May 7, 1992

SUBJECT: Alaska CSHB 377

Please find attached a letter to Representative Moyer outlining our concerns and recommendations relative to his proposed CSHB 377.

As I pointed out in my letter, our concerns lie in the total freedom that the Department of Environmental Conservation has in implementing programs with no legislative oversight being required.

I also want to express my appreciation to you and compliment your staff on their cooperation and assistance in keeping us apprised on activities on this issue.

As I indicated to Representative Moyer, since the bill is so general relative to the motor vehicle portion of the proposal, we would be more than happy to come up and meet with the Department of Environmental Conservation, your staff, and any others, after the session to discuss specific programs relative to how Alaska can in fact comply with the new federal clean air standards.

If you have any questions, I will be happy to try to respond.

Motor Vehicle Manufacturers Association  
of the United States, Inc.

Thomas H. Hanna  
President and Chief Executive Officer

May 7, 1992

Representative Tom Moyer  
Alaska State Legislature  
Room 13-C, State Capitol  
Juneau, Alaska 99801-1182

Re: CS House Bill 377

Dear Representative Moyer:

In talking with the Department of Environmental Conservation, it is our understanding that your HB 377 will be the lead bill in the State Legislature to work toward the implementation of Alaska's clean air legislation.

The Motor Vehicle Manufacturers Association, particularly during this past several years, has been working with all the state legislatures with respect to their clean air programs. We want to be supportive of a program in which Alaska will be able to meet the federal Clean Air Act standards.

Relative to Article 3: Motor Vehicle Pollution Control Program, Section 46.14.300 already basically exists in current Alaska law as Section 46.03.190 of the Alaska Environmental Conservation Law. This section gives the Department of Environmental Conservation authority to implement almost whatever motor vehicle pollution control program they wish in order to meet Alaska's clean air standards, which could include California emissions standards. Although the language does not expressly authorize this authority to the Department, such a claim could be challenged.

We strongly recommend that section 46.14.300 be amended to include language which would require the Department to conduct a study if California emissions standards were to be adopted, and reported back to the Legislature prior to the implementation of such a program. It is also our recommendation that the Legislature continue to play a role of having legislative oversight on the implementation of any other motor vehicle pollution control program and fees for Alaska.

## MEMORANDUM

MOTOR VEHICLE MANUFACTURERS ASSOCIATION  
1107 Ninth Street, Suite 1030  
Sacramento, California 95814  
916-444-3767

3 pages

TO: Terry Otness, Consultant,  
Senate Natural Resources Committee

FROM: Jim Austin *J.A.*

DATE: May 7, 1992

SUBJECT: Alaska CSHB 377

Attached is a copy of a letter I sent to Representative Moyer today, along with your chairman and the members of your committee. I just was advised this morning that HB 377 went out of House Finance Committee today and will probably go to the Floor and then over to your committee. I also have sent a copy of the letter to the Department of Environmental Conservation.

My apologies for getting these comments to you so late. As you can see, our primary concern deals with the ability of DEC, under existing law to move ahead with a program such as the California emissions program requirements for the State of Alaska. Obviously this would give us great concern and not necessarily meet the clean air needs for the State.

Also, as I pointed out in my letter to Representative Moyer, we feel it is very important that if the DEC were to implement a California emissions program, that there be a study done prior to its implementation and then come back to the Legislature for its approval. Absent the legislative oversight on this program as well as any other, they have really been given a blank check to do whatever they feel appropriate, with no controls.

Could you please make a copy of Representative Moyer's letter to your committee members.

Thank you again for all your time and I will be glad to try to respond to any questions in the short time we have left.

JWA/eb

Enclosure

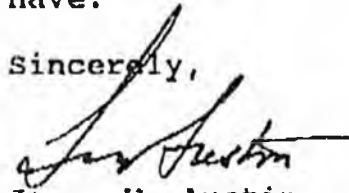
Representative Tom Moyer

Page 2

At the conclusion of the legislative session we would be more than happy to personally meet and work with the Department to discuss some of the specific programs they may have in mind.

Thank you very much for your consideration of such language in this section of the proposed bill and we would be happy to respond to any questions regarding this you may have.

Sincerely,



James W. Austin  
Public Affairs Manager  
Pacific Coast Region

JWA/eb

cc: Senator Lloyd Jones, Chairman,  
Senate Natural Resources Committee  
Members, Senate Natural Resources Committee  
Alaska Department of Environmental Conservation



*Council of Alaska Producers*

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Council of Alaska Producers  
David G. Stone, President

Council Members: AMAX

Greens Creek Mining Co.

Echo Bay Alaska Inc.

Kensington Venture

Fairbanks Gold Inc.

Cominco Alaska Inc.

Cominco Exploration

Alaska Gold Co.

North Pacific Mining Co.

Cambior Alaska

American Copper & Nickel Co.

Sec. 46.14.010. EMISSION CONTROL REGULATIONS. (a) After public hearing, the department shall adopt regulations under this chapter setting such air pollution emission standards, performance standards and limitations as are necessary to meet the requirements of state air quality control programs mandated by the Clean Air Act as amended, 42 U.S.C. 7401-7671q, and federal regulations promulgated thereunder. The department may not regulate air contaminants that are not federally regulated, nor categories of sources or facilities that are not federally regulated, nor establish an emission standard or limitation that is more stringent than a corresponding federal emission standard or limitation, except as provided in subsections (b) through (d) of this section.

(b) The department may adopt an equivalent emission limitation when required pursuant to 42 U.S.C. 7412(j).

(c) The department may apply such federal standards as are controlling in order to determine emission limitations required in each permit.

(d) The department may conduct scientific studies of air contaminants by qualified persons. All such studies shall be subject to peer review. Following peer review, if the department determines on the basis of these studies that unique meteorological conditions, source characteristics and exposure profiles are significantly different in Alaska from those upon which the federal standards and limitations are based and reasonably require the regulation of air contaminants otherwise unregulated or require more stringent emissions limitations in order to protect human health and welfare, the department shall report its findings and

recommendations to the legislature at its next regular session.  
The report shall include suggested legislation, detailed findings describing and evaluating the studies that form the basis for the department's recommendation, the results of peer review evaluations, and an analysis of the technological and economic feasibility of the proposal.

(e) State emission standards in effect on April 1, 1992 regulating ammonia, hydrogen sulfide and wood smoke may remain in effect.

(f) The department promptly shall provide exemptions for fugitive emissions to the extent allowed under federal laws and regulations, and promptly shall adopt other federally adopted exemptions.

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

(h) Emission limitations stated in permits shall be in the form of performance standards and shall not restrict the permittee to the use of particular designs or equipment.

(i) The department may require the owner and operator to use or adopt methods, processes or procedures for the management and operation of a facility regulated under this chapter if the federal administrator has promulgated, pursuant to 42 U.S.C. 7112(h), a design, equipment, work practice or operational standard, or

combination thereof, for the control of a hazardous air pollutant or pollutants that the federal administrator determines will assure the proper operation and maintenance of any such element of design or equipment, unless the federal administrator approves an alternative hazardous air pollution standard under 42 U.S.C. 7112(h)(3).

(j) The department shall include in a permit an emission standard or limitation that is more stringent than the applicable federal standard or limitation if requested by an owner and operator.

(k) For a facility containing more than one source subject to regulation under this chapter, the department shall allow numerical averaging of the emissions of each air contaminant from the several sources at that facility for purposes of determining compliance with applicable regulations and with permit limitations.

D R A F T: April 22, 1992

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

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

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

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

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

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

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

(B) reconstruction is proposed that makes it

technologically and economically feasible to meet the applicable standards of this chapter.

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

(1) a facility that emits or has the potential to emit greater than 100 tons per year (TPY) of a regulated air contaminant;

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

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

(4)[2] another stationary source designated by the federal administrator or the department, by regulation only as provided in 46.14.010.

COMMENT: The amendments delete the use of "major facility" to eliminate the ambiguity that that phrase causes, and makes it possible for a person reading the statute to be certain as to which facilities are covered for construction permits and which

facilities are covered for operating permits. The definition of  
"major facility" must be deleted from Sec. 990.

AS 46.14.222. ...COMPLETENESS - DETERMINATION. (a) The

department shall review every application submitted under this chapter for completeness. To be determined complete, an application must provide the information identified by the department in regulations adopted under AS 46.14.210 and in standard application forms provided by the department under 42 U.S.C. 7661a(b)(1), and must be certified true and correct by the owner and operator.

(b) The department shall notify the applicant in writing whether the application is complete. Unless the department notifies the applicant within 30 days of receipt of an application that the application is incomplete, the application shall be deemed to be complete.

(c) If, during the processing of an application after it has been determined or deemed to be complete, the department finds that additional information is necessary to evaluate or take action on that application, such information may be requested in writing from the owner and operator. Such a request shall not reverse a prior determination of completeness.

Sec. 46.14.225..... ADMINISTRATIVE ACTIONS REGARDING PERMITS.

(a) Except as provided in AS 46.14.245 and 46.14.255(b), after receipt of a complete application, and after notice and opportunity for public comment and hearing, the department shall issue or deny

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

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

(b) Notwithstanding (a) of this section, the department may establish a phased schedule for acting on operating permit applications submitted on or before November 15, 1994. A phased schedule must ensure that at least one-third of the applications submitted on or before November 15, 1994, will be acted on by the department during each of the three years after November 15, 1994. On or before November 15, 1997, the department shall act on all applications received on or before November 15, 1994. The department shall give priority to the issuance of permits for new facilities and modifications of existing facilities.

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

**COMMENT:** The amendment gives authority to the department to process permit applications for new and modified facilities if

- the processing of applications for unchanged existing facilities  
- creates a bottleneck. It also removes an ambiguity in the  
corresponding section of the "clean" bill relating to issuance of  
construction permits and the notice and comment period.

Sec. 46.14.230. ~~REVIEW OF PERMIT ACTION.~~ If aggrieved by a permit action under this chapter, the owner and operator, a person who participated in the public comment process, or a person with standing [UNDER STATE OR FEDERAL LAW TO OBTAIN ADMINISTRATIVE OR JUDICIAL REVIEW OF A PERMIT ACTION UNDER THIS CHAPTER] may request an adjudicatory hearing under the department's adjudicatory hearing procedures. After the issuance of an adjudicatory hearing decision, a party to the hearing may obtain judicial review of that decision as provided in Alaska Rules of Appellate Procedure.

Amend 46.14.990 to include

( ) "person with standing" means a person who has or possesses a private, substantive, legally protected interest under state law that may be adversely affected;

**COMMENT:** By deleting the language in caps in Sec. 230 and providing a specific definition of "standing", disputes over standing should be diminished at both administrative and judicial review. Hearing officers are generally not permitted to create law. Therefore, in order to simplify administrative proceedings as well as to eliminate issues on judicial review, a definition of standing should be included.

The definition of "person with standing" will preserve the rights of those who, for one reason or another, did not participate in the public comment process, but have private interests to protect.

Sec. 46.14.232. MONITORING. Monitoring of stack emissions or ambient air quality shall be required only for purposes of demonstrating compliance with applicable permit requirements. Monitoring requirements shall be reasonable and based upon test methods, analytical procedures and statistical conventions approved by the federal administrator or otherwise generally accepted as scientifically competent. Monitoring activities shall be consistent with the applicable emissions limitations standards and other requirements contained in the permit, unless otherwise agreed to by the owner and operator and the department. The department may not require owners and operators of sources to monitor emissions or ambient air quality solely for the purpose of scientific investigation or research unless mutually agreed to by both parties.

Section 46.14.260. DURATION OF OPERATING PERMITS. (a) An initial operating permit under this chapter for a new facility shall be issued for a fixed term established by the Department that is no longer than five years but no shorter than three years after the date of issue except as provided for temporary permits under 46.14.280 or unless a shorter term is requested by the permit applicant.

(b) An operating permit for an existing or modified facility and a renewal operating permit shall be issued for a fixed term of five years, except as provided for temporary permits under 46.14.280 or unless a shorter term is requested by the permit applicant.

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

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

(b) A permit issued under this chapter is subject to [REVIEW AND] reopening by the department if the permit is issued to a major facility and has a remaining duration [IS VALID FOR A TERM] of three or more years. The department shall reopen a permit described in this subsection to incorporate changes in law, or to impose equivalent emission limitations, that become [BECAME] applicable after the permit is [WAS] issued. The department shall make revisions [INCORPORATIONS] allowed under this subsection as soon as practicable, but, regarding a change in law, no later than 18 months after the change in law takes [TOOK] effect. The department may not reopen a permit under this subsection if the change in law is not effective until after the date that the permit expires. Reopening of a permit under this subsection shall be treated as a permit renewal by the department if the procedural requirements for permit renewal have been met.

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

(d) The department shall provide written notice of intent to reopen and revise a permit issued under this chapter to the owner and operator of a facility not less than 30 days before the date

the permit is to be reopened, except that the department may provide a shorter period in the event of an emergency.

COMMENT: The Clean Air Act speaks of "reopening and revision", not "review." "Review" has been deleted because use of that word creates some ambiguity, suggesting that a permit must be reopened to afford the department the opportunity to "review" the permit.

The grammar has been changed to make clear that the department's authority to reopen permits is continuing. The word "incorporations" has been changed to "revisions" to reflect the purpose and procedures more precisely.

Subsection (d) has been added to make sure that the owner and operator of a facility receive at least the minimum notice required by the Clean Air Act.

Amend 46.14.270 to read as follows: ~

Sec. 46.14.270. ~~MODIFICATION, TERMINATION, OR REVOCATION AND REISSUANCE OF PERMITS.~~ (a) The department may modify a permit issued under this chapter if the owner and operator of the facility request modification or if the department determines that

(1) the permit contains a material mistake; or

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

(b) The department may modify or terminate a permit issued under this chapter if the department finds that the permit was obtained by misrepresentation of a material fact, or the owner and operator failed to disclose fully the facts supporting issuance of the permit;

(c) The department may revoke and reissue a permit issued under this chapter if the department finds that the permit must be revoked and reissued to assure compliance with applicable requirements.

(d) The department shall give written notice of intent to the owner and operator not less than 30 days before commencement of proceedings to modify, terminate, or revoke and reissue a permit. The notice shall include the finding required under (b) or (c) of this section.

(e) Proceedings under this section shall be conducted in accordance with regulations adopted by the department governing issuance, renewal, and reopening of permits.

Sec. 46.14.285. PERMIT AS SHIELD. (a) Compliance with an operating permit, order or other determination issued under this chapter is considered to be compliance with [THE OPERATING PERMIT PROGRAM ESTABLISHED UNDER] this chapter.

(b) Nothing in this section alters or affects

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

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

SEC. 46.14.297. INSPECTION. An officer or employee of the department designated by the commissioner may, upon presentation of credentials and at reasonable times, enter upon or through any premises of a facility regulated under this chapter to (1) inspect and copy any records required to be maintained; (2) inspect any monitoring equipment or method required to be used; or (3) sample any emissions that the owner and operator of the facility is required to sample.



1 concentrations of population;  
2 (2) local air contaminant sources; or  
3 (3) relevant geographic, topographic, or  
4 meteorological factors.

5 (d) A municipality or a local air quality district seeking  
6 department approval for a local air quality control program shall  
7 enter into a cooperative agreement with the department. The  
8 cooperative agreement shall avoid unnecessary duplication of  
9 responsibilities and must include provisions specifying

10 (1) the respective duties and authority of the  
11 department and the municipality or local air quality  
12 district in the administration of the local air quality  
13 control program;

14 (2) the authority of the municipality or the local  
15 air quality district to employ staff to administer the  
16 local air quality control program;

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

19 (4) respective enforcement responsibilities of the  
20 department and the municipality or the local air quality  
21 district.

22 (e) A local air quality control program shall provide for the  
23 exemptions of a locally registered motor vehicle from motor vehicle  
24 emission requirements adopted under AS 46.14.300 if the motor  
25 vehicle is not used within the program's jurisdiction.

26 (f) A municipality or a local air quality district

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

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

13

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

(a) Except as provided in (d) of this section, a person is guilty of a class A misdemeanor if the person intentionally [WITH CRIMINAL NEGLIGENCE]

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

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

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

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

(5) renders inaccurate a monitoring device or method required to be maintained under AS 46.14, a regulation adopted under AS 46.14, or a permit issued by the department or a

local air quality control program under AS 46.14.

\*Sec. 18... AS 46.03.790 is amended by amending subsection (g)(2) and by adding a new subsection (h), as follows:

(g)(2) "Intentionally" has the same meaning given in AS 11.81.900. [CRIMINAL NEGLIGENCE HAS THE SAME MEANING GIVEN IN AS 11.81.900]

\*Sec. 22. REPORT AND RECOMMENDATIONS ON PERMIT FEE PROGRAM.

(a) By January 31, 1993, the department shall provide to the legislature

(1) recommended legislation, together with the federal administrator's comments as to its legal adequacy, to establish a permit fee program designed to

(A) allocate equitably and fairly direct and indirect costs among owners and operators of facilities required to have permits; provide that no source or source classification bears an unreasonable or disproportionate share of the cost of the permit program or the small business assistance program;

(B) meet the requirements of Title V of the Clean Air Act, 42 U.S.C. 7401-7671q; and

(C) assure maximum efficiency and minimize total cost of all program elements, including excessive staffing for permit applications and meetings, to be supported from permit fees;

(2) a report to the legislature containing the proposed permit fee schedule, including

(A) a detailed discussion of the facts and rationale for the proposal;

(B) a detailed comparison of cost and staffing data using the number of permits issued or otherwise processed annually under the air permit program set forth as AS 46.03.140-245 and other similar regulatory programs administered by the department,

(C). comparisons based upon data from at least five other states with air permit programs similar to the program administered by the department.

(b) The department shall by October 15, 1992, publish for public review and comment drafts of the materials produced in response to subsection (a), and shall provide to the legislature by January 31, 1993, a summary of the public comments received, any alternative fee schedules suggested by the public and the department's analysis of and response to the public comments.

COMMENT ON SECS. 267 AND REVISED 270. EPA recommends that states adopt a notice amendment procedure and a fast-track procedure for minor modifications. The notice amendment procedure would be used when no public comment is required and under the language of proposed Sec. 267, would relate to changes at a facility that would not affect air emissions.

Modifications are subject to public notice and comment proceedings under EPA guidelines. Without either final EPA regulations or state regulations, it is difficult to describe those modifications that might be suitable for a fast-track procedure. Therefore, under the revision to Sec. 270, all modifications would be treated the same.

The changes proposed are as follows:

1. Subsection (a) provides for modification at the request of the owner and operator or if a material mistake has been made or a material change in the quantity or type of air contaminant emitted by the facility.

2. Subsection (b) gives the department flexibility to modify or terminate a permit. If the owner and operator unwittingly misrepresented a material fact or failed to disclose facts, the department may determine that it is in the best interests of the public not to terminate the permit, but simply modify it.

3. Subsection (c) makes it clear when revocation and reissuance could occur.

4. Subsection (d) makes explicit the minimum standards for notice to the owner and operator as provided in the EPA

guidelines. EPA requires that the findings in (b) or (c) be furnished with the notice.

5. Subsection (e) presumes that the department will establish by regulation common procedures for all permit actions that require public notice and comment and that proceedings for modification, termination, and revocation and reissuance will be covered by such procedures.

Sec. 270 in the DEC draft makes it difficult for a person having to deal with that provision to understand when a particular action will be used. Regulations dealing with the various actions will be easier to write and fewer challenges to the appropriateness of the department's actions are anticipated.

Explanation of Section 14:

The Producer's Council initially proposed a separate civil penalty provision applicable only to air quality violations. In response to the Department's concern about this approach, we have agreed to use the existing civil penalty provisions in 46.03 as our starting point. This proposal, which is similar to our original suggestion, amends 46.03.760(f) by adding certain penalty assessment criteria contained in the Clean Air Act (Section 113(e)) and by incorporating a requirement for the department to adopt a penalty policy by regulation. These changes will help assure fairness and predictability in the use and application of civil penalties.

Explanation of change to proposed 46.14.030:

Since the first sentence of this section is a general policy statement we thought it should be relocated to the "Purposes" clause in Section 1 (see page 1 of our draft, lines 11-14). The last sentence, referring to the Department's authority to adopt regulations, was deleted because it is redundant (see 46.14.010, 46.14.210; and Section 26).

# STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

## DEPT. OF ENVIRONMENTAL CONSERVATION

OFFICE OF THE COMMISSIONER

410 WILLOUGHBY AVENUE, JUNEAU, AK 99801-1795

PHONE: (907) 465-5050

FAX: (907) 465-5070

April 22, 1992

Council of Alaska Producers  
Robertson, Monagle & Eastaugh  
240 Main, Suite 800  
Juneau, AK 99801

Attn: James Clarke

Dear Mr. Clarke:

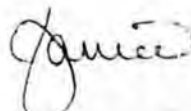
Enclosed is a packet of draft amendments concerning HB 377, the Air Bill. These draft amendments will be the subject of discussion at a work session to be held this Friday, April 24, in the Capitol Building, Room 17, starting at 10:30 a.m.

The draft amendments were generated in response to several suggestions put forward by the Council of Alaska Producers and other industry groups during the past few weeks. The contents of this packet do not represent all the potential amendments that may be put forward in response to numerous recent discussions, but simply those which could be accomplished in the limited time prior to Friday's meeting.

Our intent is to focus on the major issues concerning the Air Bill on Friday in an attempt to resolve those issues with compromise language that will satisfy the Department as well as the affected industries.

It is our hope that, where agreement is reached, Representative Mcyer, as sponsor of HB 377, will suggest appropriate amendments to the bill. We look forward to continued cooperation and a productive meeting on Friday.

Sincerely,



Janice Adair  
Assistant Commissioner

Enclosure

cc: The Honorable Lloyd Jones (w/enclosure)  
The Honorable Tom Moyer (w/enclosure)

AMENDMENT PACKET #1 ADEC/ADOL 4/21/92

1 OF 2 PROPOSALS FOR Sec. 010

PROPOSED AMENDMENT TO CS HB377 (JUD)

Sec. 46.14.010. AMBIENT AND EMISSION CONTROL REGULATIONS. (a)  
After public hearing, the department may adopt regulations under this chapter as necessary to prevent, abate, control, or identify air pollution [ DUE TO EMISSIONS, INCLUDING REGULATIONS SETTING EMISSION STANDARDS, PERFORMANCE STANDARDS, AND LIMITATIONS ]. The standards and limitations adopted under this section [ MAY BE BASED ON HUMAN HEALTH AND WELFARE OR ON AVAILABLE TECHNOLOGY AND ] may be for the state as a whole or may vary from area to area in recognition of local conditions. The Department shall [ MAY ] provide exemptions for fugitive emissions to the extent allowed under federal law and regulations.

(b) Ambient air quality standards adopted by the department in regulation shall be based upon protecting human health and welfare. The numeric value of an ambient standard shall be identical to the value established in federal law, if any, by the federal Environmental Protection Agency, for the particular air contaminant.

(c) Emission standards, performance standards and emission limitations which are adopted by the department in regulation or specified in a permit to

restrict the release of air contaminants to the atmosphere shall be based on protecting human health and welfare or on reasonably available technology.

(1) The department shall adopt, in regulation, emission standards, performance standards and emission limitations applicable to individual sources within a facility, or to facility-wide activities. Facility-wide standards or limitations shall be based on emissions rates from multiple sources at the facility.

(2) Emission standards, performance standards and emission limitations adopted in regulations shall not be more restrictive than the most restrictive applicable federal emission standard, performance standard or limitation unless the department demonstrates that a more restrictive standard is reasonably achievable after taking into account available technology, economic impacts, engineering feasibility and reliability, and environmental impacts.

(3) Emission standards, performance standards and emission limitations specified in a permit, shall not be more restrictive than any applicable standard established in regulation or the most restrictive applicable federal emission standard, performance standard or limitation unless:

(i) A more restrictive standard is requested by the owner and operator of the facility:

(ii) A more restrictive standard is necessitated by a source specific or facility specific determination required under 42 U.S.C. 7401 - 7671a (Clean Air Act) and federal regulations adopted under those laws: or

(iii) A more restrictive standard is necessary to remedy a violation of an ambient air quality standard.

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

PROPOSED AMENDMENT TO DRAFT CS PREPARED BY PRODUCER'S COUNCIL

Sec. 46.14.010. AMBIENT AND EMISSION CONTROL REGULATIONS.

(a) After public hearing, the department may adopt regulations under this chapter setting ambient air quality standards and [ SUCH AIR POLLUTION ] emission standards, performance standards and limitations as are necessary to protect human health and welfare, meet the requirements of state air quality control programs mandated by the Clean Air Act as amended, 42 U.S.C. 7401-7671q, and federal regulations promulgated thereunder. The department may not regulate chemical air constituents that are not federally regulated until the Administrative Regulation Review Committee of the Alaska Legislature has been notified and had adequate time to review the proposed regulation. The department may not regulate [ , NOR ] categories of sources or facilities that are not federally regulated [ , ] unless the associated emissions are likely to result in a violation of an ambient air quality standard.

(b) Ambient air quality standards adopted in regulation shall be identical in numeric value to that value established in federal law, if any, by the Environmental Protection Agency, for that particular air contaminant. Regulations in effect on April 1, 1992 pertaining to ammonia, hydrogen sulfide and particulate matter from wood smoke may remain in effect.

(c) the department shall not establish an emission standard,

performance standard or limitation that is more stringent than the most restrictive [ A ] corresponding federal emission standard or limitation, if any, except as provided in the following: [ SUBSECTIONS (b) THROUGH (d) OF THIS SECTION. ]

(1) [ (b) ] the department may adopt an equivalent emission limitation when required under [ PURSUANT TO ] 42 U.S.C. 7412(j) (Clean Air Act); [.]

(2) [ (c) ] the department may apply such federal standards as are controlling in order to determine emission limitations required in each permit; [.]

(3) the department may establish, in a permit, emission standards resulting from a source specific or facility specific determination required under 42 U.S.C. 7401 - 7671g (Clean Air Act);

(4) the department may establish, in a permit, more restrictive emission standards upon request by the owner and operator of a facility;

(5) the department may establish, in a permit, more restrictive emission standards to remedy a violation of an ambient air quality standard; and

(6) following notice and opportunity for review by the Administrative Regulation Review Committee of the Alaska Legislature, the department may establish a more restrictive emission standard, in regulation, based upon a demonstration that a more restrictive standard is reasonably achievable after taking into account available technology, economic impacts, engineering feasibility and reliability, and environmental impacts.

[ (d) STATE REGULATIONS IN EFFECT ON APRIL 1, 1992 REGULATING AMMONIA, HYDROGEN SULFIDE AND WOOD SMOKE MAY REMAIN IN EFFECT. ]

(d) [(e)] The department shall provide exemptions for fugitive emissions to the extent allowed under federal laws and regulations, and ~~may~~ [ SHALL ] adopt other federally adopted exemptions.

(e) The department may adopt emission standards, performance standards or emission limitations based upon facility-wide activities in recognition of the numeric emission rates from multiple sources within the facility.

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

(g) Emission limitations stated in permits shall be in the form of performance standards and ~~shall not restrict the permittee to the use of particular designs or equipment.~~

(h) The department may not require the owner and operator to use or adopt methods, processes or procedures for the management and operation of a facility regulated under this chapter unless:

(1) the method, process or procedure is used directly or

indirectly to measure or report emission rates, quantities or concentrations, from the facility;

(2) the method, process or procedure is used to measure ambient concentrations of air contaminants or meteorological parameters;

(3) the method, process or procedure is required under 42 U.S.C. 74--(Clean Air Act Section 112(h));

(4) the method, process or procedure is part of a compliance plan or a start-up/shutdown/malfunction plan; and

(5) I'M NOT CERTAIN THAT I HAVE IDENTIFIED EVERYTHING THAT MAY BE NEEDED IN THIS CATEGORY.

AMENDMENT PACKET #2 ADEC/ADOL 4/21/92  
1 OF 1 PROPOSAL

PROPOSED AMENDMENT TO DRAFT CS PREPARED BY PRODUCER'S COUNCIL

Sec. 46.14.030. STATE AIR QUALITY PLAN.

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

PROPOSED AMENDMENT TO CS HB377 (JUD)

Sec. 46.14.200. PERMITS FOR CONSTRUCTION, MODIFICATION, OR OPERATION. (a) A person [ MAY NOT ] who intends to construct, install, modify, reconstruct, or establish a facility subject to AS 46.14.205(a)[ , EXCEPT IN COMPLIANCE WITH THE ] must obtain a construction permit. [ AND AN ORDER OR OTHER DETERMINATION OF THE DEPARTMENT UNDER THIS CHAPTER. ]

(b) A person [ MAY NOT OPERATE A MAJOR FACILITY OR ] who operates or intends to operate a facility [ THAT CONTAINS ONE OR MORE OF THE SOURCES LISTED IN ] subject to AS 46.14.205(b) must obtain an operating permit or [ EXCEPT IN COMPLIANCE WITH THE OPERATING PERMIT AND ] an order or other determination of the department under this chapter.

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

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

(e) If the federal administrator exempts a source from the requirements of 42 U.S.C. 7661a(a) (Clean Air Act, sec. 502(a)),

the commissioner, by regulation, shall [ MAY ] exempt that source from equivalent [ SOME OR ALL OF THE ] requirements of this chapter.

PROPOSED AMENDMENT TO CS HB377 (JUD)

Sec. 46.14.205. FACILITIES REQUIRING PERMITS. (a)

Before constructing, installing, modifying, reconstructing, or establishing a facility, the owner and operator shall obtain a construction permit from the department if the facility is any one of the following:

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

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

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

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

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

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

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

(b) The owner and operator of a facility shall obtain an operating permit from the department if the facility is [ A MAJOR FACILITY, ] a facility subject to (a) of this section [,] or is a facility that [ CONTAINS ONE OR MORE OF THE FOLLOWING SOURCES ]:

(1) emits or has the potential to emit greater than 100 tons per year (TPY) of a regulated air contaminant;

(2) emits or has the potential to emit greater than 10 TPY of a hazardous air contaminant, or 25 TPY, in aggregate, of two or more hazardous air contaminants;

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

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

PROPOSED AMENDMENT TO CS HB377(JUD)

Sec. 46.14.210. EMISSION CONTROL PERMIT PROGRAM REGULATIONS.

(a) The department shall adopt regulations to address all procedural and substantive elements of the emission control permit program, except procedural elements that relate only to the internal management of the department and do not affect the public or govern the way the department deals with the public. The regulations shall be reasonable, adequate, and provide maximum flexibility in the operation of a facility consistent with the 42 U.S.C. 7401 - 7671g (Clean Air Act) and applicable federal regulations. The regulations must include the following:

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

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

(3) procedures for

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

(B) processing and reviewing an application;

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

(D) issuing permits;

(4) reasonable standard permit conditions, including conditions for

(A) emission standards and limitations;

(B) monitoring, recordkeeping, and reporting for facilities subject to AS 46.14.205;

(C) inspection and entry;

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

(E) annual certification of compliance; and

(F) excess emission or process deviation reporting;

(5) fees, and procedures for collecting fees;

(6) procedures for renewing, modifying, or amending a permit that provide maximum flexibility in the operation of the facility, including procedures to allow changes to a permitted facility without requiring a permit revision whenever provided in federal regulations, consistent with the purposes of this chapter and with 42 U.S.C. 7401 - 7671g (Clean Air Act); and

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

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

AMENDMENT PACKET #6 ADEC/ADOL 4/21/92

1 PROPOSAL W/ 3 OTHER EFFECTED SECTIONS

PROPOSED AMENDMENT TO CS HB377(JUD)

Sec. 46.14.220. TIME FOR SUBMISSION OF PERMIT APPLICATIONS.

(a) The owner and operator of a facility required to have an operating permit under this chapter shall submit the required application and monitoring, reporting, and quality assurance plan no later than

(1) 12 months after the date on which the facility becomes subject to AS 46.14.200(b) [ , OR AT AN EARLIER TIME IF REQUIRED BY THE DEPARTMENT. ] ;or

(2) 12 months after the Approval Date, whichever is later.

The Approval Date is the date on which the federal administrator approves the state permit program under 42 U.S.C. 7661a(d).

(b) The department may accept and begin processing applications filed earlier than the Approval Date. Applications filed early may be given priority for permit issuance.