

ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672
7639 SENATE RESOURCES

PROPOSED AMENDMENTS TO CS HB377(JUD)

Sec. 46.14.225. ADMINISTRATIVE ACTIONS REGARDING PERMITS. (a) Except as provided in AS 46.14.245 and AS 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 within the time required under AS 46.14.220 [ON OR BEFORE NOVEMBER 15, 1994]. A phased schedule must ensure that at least one-third of the applications submitted during the initial application period [ON OR BEFORE NOVEMBER 15, 1994,] will be acted on by the department during each of the three years following the initial application period [AFTER NOVEMBER 15, 1994. ON OR BEFORE NOVEMBER 15, 1997, THE DEPARTMENT SHALL ACT ON ALL APPLICATIONS RECEIVED ON OR BEFORE NOVEMBER 15, 1994].

(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.

AMENDMENT PACKET #6 ADEC/ADOL 4/21/92
SUPPORT AMENDMENT #2 FOR Sec.220

PROPOSED AMENDMENT TO CS HB377(JUD)

* Sec. 26. AS 46.14.200(b), 46.14.205(a)(5) and (b), 46.14.220, 46.14.240, 46.14.245, 46.14.265, 46.14.270, 46.14.280, 46.14.290, and 46.14.292, created by sec. 4 [2] of this Act, take effect on the day the federal administrator approves the state permit program under 42 U.S.C. 7661a(d) [NOVEMBER 15, 1993].

AMENDMENT PACKET #6 ADEC/ADOL 4/21/92
SUPPORT AMENDMENT #3 FOR Sec.220

PROPOSED AMENDMENT TO CS HB377(JUD)

* Sec. 25. AS 46.14.010, 46.14.020, 46.14.200(a), (c), and (d), 46.14.205(a)(1) - (4), 46.14.210, 46.14.215, 46.14.225, 46.14.230, 46.14.235, 46.14.250, 46.14.255, 46.14.260, 46.14.275, 46.14.285, 46.14.295, 46.14.300, 46.14.400, 46.14.410, 46.14.420, 46.14.430, 46.14.500, 46.14.510, 46.14.520, 46.14.530, 46.14.540, 46.14.550, 46.14.560, and 46.14.900, created by sec. 4 [2] of this Act, and secs. 1 and 3 - 24 of this Act take effect immediately under AS 01.10.070(c).

PROPOSED AMENDMENT TO DRAFT CS PREPARED BY PRODUCER'S COUNCIL

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 AS 46.14.210(a)(1) [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 60 [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.

PROPOSED AMENDMENT TO CS HB377(JUD)

Sec. 46.14.240. GENERAL OPERATING PERMITS. After notice and opportunity for public comment and hearing, the department may, unless the permit is disapproved by the federal administrator, establish a general operating permit that would be applicable to more than one facility determined by the department to be similar in source structure. A general operating permit must contain provisions that meet the requirements of this chapter applicable to operating permits. A general operating permit becomes effective when the application is determined to be complete unless the department notifies the applicant that the general permit is not applicable to the facility [IS NOT EFFECTIVE FOR A SPECIFIC FACILITY UNTIL THE OWNER AND OPERATOR OF THE FACILITY HAS SUBMITTED AN APPLICATION UNDER AS 46.14.220 AND THE DEPARTMENT HAS ISSUED THE GENERAL PERMIT OPERATING PERMIT. THE DEPARTMENT SHALL ISSUE OR DENY A GENERAL OPERATING PERMIT WITHIN 30 DAYS AFTER RECEIPT OF A COMPLETE APPLICATION].

PROPOSED AMENDMENT TO DRAFT CS PREPARED BY PRODUCER'S COUNCIL

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

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

(1) recommended legislation, together with any comments by the federal administrator ['S COMMENTS] as to its legal adequacy, to establish a permit fee program designed to

(A) be equitable and fair among owners and operators of facilities required to have permits; [, AND]

(B) meet the requirements of Title V of the Clean Air [WATER] 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) a comparison [COMPARISONS] of fee schedules 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 November [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.

AMENDMENT PACKET #10 ADEC/ADOL 4/21/92
1 OF 1 PROPOSALS FOR Sec.260
W/ ASSOCIATE CHANGE Sec.270

PROPOSED AMENDMENT TO CS HB377(JUD)

Sec. 46.14.260. DURATION OF OPERATING PERMITS. (a) An operating permit under this chapter, including an operating permit that contains a compliance schedule, shall be issued for a fixed term of five years [established by the department that is no longer than five years and no shorter than three years] after the date of issue, except as provided for temporary operations [PERMITS] under AS 46.14.280 or unless a shorter term is requested by the permit applicant.

(b) 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.

AMENDMENT PACKET #10 ADEC/ADOL 4/21/92
AMENDMENT Sec 270 TO SUPPORT Sec.260

PROPOSED AMENDMENT TO CS HB377(JUD)

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

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

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

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

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

(D) the permittee has failed to construct or modify a facility within the time period specified in a construction permit, if any, required under AS 46.14.205(a);

(2) modify, amend, or revoke and reissue a construction or operating permit if the department finds that the permit contains a material mistake or if requested by the owner and operator of the facility.

AMENDMENT PACKET #11 ADEC/ADOL 4/21/92

1 OF 1 PROPOSALS FOR MALFUNCTIONS

PROPOSED NEW SECTION TO CS HB377 (JUD)

Sec. 46.14.____ EXCESS EMISSION EVENTS CAUSED BY MALFUNCTIONS

An event occurring during the startup, shutdown, or malfunction of a source or the associated pollution control equipment which results in noncompliance with an emission standard, performance standard or emission limitation is an excess emission event. An unavoidable excess emission event shall not be considered a violation of the permit, except when an ambient air quality standard is exceeded. An unavoidable excess emission event shall not include events caused entirely or in part by improperly designed equipment, lack of preventive maintenance, careless or improper operation, or operator error. Nothing in this section limits the department's power to enjoin the emission or mandate corrective action.

Definitions for AS 46.14.990:

"Startup" means setting into operation any source, including associated pollution control equipment, process equipment or a process.

"Shutdown" means cessation of operation of any source, including associated pollution control equipment, process equipment or a process, for any reason.

"Malfunction" means any sudden and unavoidable failure of a source, including pollution control equipment and process equipment. A failure caused entirely or in part by poor maintenance, careless operation, or any other preventable condition or preventable equipment breakdown shall not be considered a malfunction.

7-GS2001ND
Lauterbach
5/8/92

**CS FOR SENATE BILL NO. 383 (RESOURCES)
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - SECOND SESSION**

BY THE SENATE RESOURCES COMMITTEE

**Offered:
Referred:**

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

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 fees charged for emission control permits; relating to civil and
3 criminal penalties, damages, and other remedies for air quality control violations; clarifying
4 the definition of 'hazardous substance' to include releases and threatened releases to the
5 atmosphere; amending the lien provisions relating to the oil and hazardous substance
6 release response fund; relating to inspection and enforcement powers of the Department
7 of Environmental Conservation; and providing for an effective date."**

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

**9 * Section 1. POLICY; PURPOSES. (a) It is the policy of the state to have a program to prevent,
10 abate, control, and identify air pollution that complies with 42 U.S.C. 7401 - 7671q (Clean Air Act), as
11 amended, and federal regulations adopted under those sections.**

**12 (b) The primary purpose of this Act is to bring the state into compliance with the 1990
13 amendments to the federal Clean Air Act codified at 42 U.S.C. 7401 - 7671q. Changes in state law are**

1 necessary to allow the state to continue to have primary management of air quality in the state and to
2 retain federal approval of the state's air quality control program in order to ensure the continued receipt
3 of federal highway and air pollution control money. The federal Environmental Protection Agency must
4 prohibit the approval of highway projects and highway grants, and may withhold air pollution control
5 grants, if the state does not comply with 42 U.S.C. 7401 - 7671q (Clean Air Act).

6 (c) It is the legislature's intent that the state comply with 42 U.S.C. 7401 - 7671q (Clean Air
7 Act) in a manner that meets the federal requirements, allows for efficient and cost effective processing
8 of permits, requires accountability from the Department of Environmental Conservation on matters
9 relating to recovery of program costs, and ensures the productivity of the state's businesses while
10 protecting the health and welfare of the state's residents.

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

16 * Sec. 2. AS 46 is amended by adding a new chapter to read:

17 CHAPTER 14. AIR QUALITY CONTROL.

18 ARTICLE 1. CLASSIFICATIONS AND STANDARDS.

19 Sec. 46.14.010. EMISSION CONTROL REGULATIONS. (a) After public hearing, the
20 department may adopt regulations under this chapter establishing ambient air quality standards
21 and emission standards as necessary to meet the requirements under 42 U.S.C. 7401 - 7671q
22 (Clean Air Act), as amended, for state air quality control programs. The standards established
23 under this section may be for the state as a whole or may vary in recognition of local conditions.

24 (b) Except as provided in AS 46.14.020 and 46.14.205(a)(3), the department may not
25 adopt a regulation that regulates air contaminants, sources or categories of sources, or facilities
26 that are not required to be regulated under federal law.

27 (c) Except as provided in (d) and (e) of this section, the department shall comply with
28 AS 46.14.015 before adopting a regulation that establishes an emission standard or ambient air
29 quality standard

30 (1) for which there is no corresponding federal standard; or

31 (2) that is more stringent than a corresponding federal standard.

1 (d) Notwithstanding AS 46.14.015 and (c) of this section, the department may, after
2 public hearing, adopt a regulation that establishes an emission standard for benzene or for open
3 burning without complying with AS 46.14.015.

4 (e) The department shall include an emission standard in a permit that is more stringent
5 than the otherwise applicable federal or state emission standard, and is not required to follow the
6 procedures of AS 46.14.015 in order to do so, if the more stringent standard is

7 (1) requested by the owner or operator to whom the permit is issued; or

8 (2) determined to be necessary based on the source-specific or facility-specific
9 determination required under 42 U.S.C. 7401 - 7671q or federal regulations adopted under those
10 sections.

11 (f) The department's regulations must provide for exemptions for fugitive emissions to
12 the extent allowed under federal laws and regulations.

13 (g) An emission standard adopted by the department may be applicable to individual
14 sources within a facility or to all sources within a facility. For purposes of determining
15 compliance with applicable regulations and with permit limitations, the department may allow
16 numerical averaging of the emissions of each air contaminant from several sources within a
17 facility if

18 (1) requested by the owner and operator; and

19 (2) allowed under 42 U.S.C. 7401 - 7671q.

20 (h) In implementing this chapter, the department may not require a person to use

21 (1) machinery, devices, or equipment from a particular supplier or produced by
22 a particular manufacturer if the applicable emission standard may be met by machinery, devices,
23 or equipment available from another supplier or manufacturer; or

24 (2) specific methods, processes, procedures, or equipment for the management and
25 operation of a facility regulated under this chapter except to the extent that the federal
26 administrator

27 (A) has adopted a design, equipment, work practice, or operational
28 standard under 42 U.S.C. 7412(h) for the control of a hazardous air pollutant; and

29 (B) has not approved an alternative hazardous air pollutant standard under
30 42 U.S.C. 7412(h)(3).

31 Sec. 46.14.015. SPECIAL PROCEDURES FOR MORE STRINGENT REGULATIONS;

1 ADVISORY PANEL. (a) Before adopting a regulation governed by AS 46.14.010(c), or seeking
2 legislative authorization to regulate an air contaminant, source, categories of sources, or facility,
3 or to adopt a more stringent ambient or emission standard than otherwise authorized under
4 AS 46.14.010, or issuing a permit that contains an equivalent emission limitation, the department
5 shall

6 (1) undertake or provide for competent scientific and technical studies of the air
7 contaminant, source, or category of sources; the studies shall be subjected to peer review;

8 (2) submit its findings, the studies performed under (1) of this subsection, and the
9 related peer review comments to a science advisory panel established under (b) of this section;

10 (3) make available to the public at convenient locations copies of the department's
11 proposed regulations or legislative authorization, the studies performed under (1) of this
12 subsection, the related peer review comments, the written opinions and recommendations of the
13 science advisory panel, the findings of the department describing the basis for the department's
14 proposed adoption of regulations, and an analysis of the technological and economic feasibility
15 of the proposal.

16 (b) To assist the department under (a) of this section or at any other time when the
17 department needs assistance to investigate the effects of air contamination on human health and
18 welfare or on the environment, the department shall appoint a science advisory panel consisting
19 of three persons. The panel members may not be employees of the department. The panel
20 members must be knowledgeable in the fields of science, health, or engineering, and at least one
21 of the members must have specific experience concerning the air contaminant or source the
22 department intends to regulate or investigate. Panel members are entitled to reimbursement for
23 travel expenses and per diem as authorized for boards and commissions under AS 39.20.180 and
24 to compensation of \$50 a day while performing duties required of the panel. AS 09.25.110 -
25 09.25.120 (public records law) and AS 44.62.310 (open meetings law) apply to a panel
26 established under this subsection. A panel shall submit its opinions and recommendations to the
27 department within 90 days after being requested to do so unless the department agrees to a longer
28 period of review.

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

30 (a) The department, by regulation, may classify facilities or sources that, in the department's
31 determination, are likely to cause or contribute to air pollution, according to the levels and types

1 of emissions and other characteristics that relate to air quality. The department may make a
2 classification under this subsection applicable to the state as a whole or to a designated area of
3 the state. The department shall base the classifications on consideration of health, economic, and
4 social factors, sensitivity of the receiving environment, and physical effects on property.

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

11 Sec. 46.14.030. STATE AIR QUALITY PLAN. The department shall act for the state
12 in any negotiations relative to the state air quality control plan developed under 42 U.S.C. 7401 -
13 7671q (Clean Air Act), as amended. The department may adopt regulations necessary to
14 implement the state plan.

15 ARTICLE 2. EMISSION CONTROL PERMIT PROGRAM.

16 Sec. 46.14.200. PERMITS FOR CONSTRUCTION, MODIFICATION, OR
17 OPERATION. (a) A person who intends to construct, install, modify, reconstruct, or establish
18 a facility subject to AS 46.14.205(a) must obtain a construction permit under this chapter.

19 (b) A person who operates or intends to operate a facility subject to AS 46.14.205(b)
20 must obtain an operating permit or an order or other determination of the department under this
21 chapter.

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

24 (d) The department shall ensure that permits issued, modified, amended, renewed, or
25 revoked and reissued under this chapter comply with the emission limitations and other
26 requirements of 42 U.S.C. 7401 - 7571q (Clean Air Act), applicable federal regulations, and the
27 state air quality control plan.

28 (e) If the federal administrator exempts a source from the requirements of 42 U.S.C.
29 7661a(a) (Clean Air Act, sec. 502(a)), the commissioner, by regulation, shall exempt that source
30 from equivalent requirements of this chapter.

31 Sec. 46.14.205. FACILITIES REQUIRING PERMITS. (a) Before constructing,

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

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

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

7 (3) a new facility of a type classified under AS 46.14.020 that has the potential
8 to violate the ambient air quality standards;

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

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

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

17 (B) reconstruction is proposed.

18 (b) The owner and operator of a facility shall obtain an operating permit from the
19 department if the facility is a facility subject to (a) of this section or a facility that

20 (1) emits or has the potential to emit greater than 100 TPY of a regulated
21 contaminant;

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

24 (3) contains a source subject to federal new source performance standards under
25 42 U.S.C. 7411 (Clean Air Act, sec. 111) or national emission standards for hazardous air
26 pollutants issued under 42 U.S.C. 7412 (Clean Air Act, sec. 112); or

27 (4) contains another stationary source designated by the federal administrator or
28 the department, by regulation.

29 Sec. 46.14.210. EMISSION CONTROL PERMIT PROGRAM REGULATIONS. (a)
30 The department shall adopt regulations to address all procedural elements of the emission control
31 permit program, except procedural elements that relate only to the internal management of the

1 department and do not affect the public or govern the way the department deals with the public.
2 The regulations must be reasonable and adequate, and provide maximum flexibility in the
3 operation of a facility consistent with AS 46.14.010 and 42 U.S.C. 7401 - 7671q (Clean Air Act),
4 as amended, and applicable federal regulations. The regulations must include the following:

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

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

10 (3) procedures for

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

12 (B) processing and reviewing an application;

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

15 (D) issuing permits;

16 (4) reasonable standard permit conditions, including conditions for

17 (A) emission standards and limitations;

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

20 (C) inspection and entry;

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

22 (E) annual certification of compliance; and

23 (F) excess emission or process deviation reporting;

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

25 (6) procedures for renewing, modifying, or amending a permit that provide
26 maximum flexibility in the operation of the facility, including procedures to allow changes to a
27 permitted facility without requiring a permit modification, consistent with the purposes of this
28 chapter and with 42 U.S.C. 7401 - 7671q (Clean Air Act); and

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

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

4 Sec. 46.14.220. TIME FOR SUBMISSION OF PERMIT APPLICATIONS. (a) The
5 owner and operator of a facility required to have an operating permit under this chapter shall
6 submit the required application and monitoring, reporting, and quality assurance plan no later
7 than (1) 12 months after the date on which the facility becomes subject to AS 46.14.200(b); or
8 (2) 12 months after the date on which the federal administrator approves the state permit program
9 under 42 U.S.C. 7661a(d), whichever is later.

10 (b) The department may accept and begin processing applications filed earlier than the
11 submission date. Applications filed earlier may be given priority for permit issuance.

12 Sec. 46.14.222. COMPLETENESS DETERMINATION. (a) The department shall
13 review every application submitted under this chapter for completeness. To be determined
14 complete, an application must provide the information identified by the department in regulations
15 adopted under AS 46.14.210 and in standard application forms provided by the department under
16 AS 46.14.210(a)(1) and must be certified true and correct by the owner and operator.

17 (b) The department shall notify the applicant in writing whether the application is
18 complete. Unless the department notifies the applicant within 60 days of receipt of an application
19 that the application is incomplete, the application is considered to be complete.

20 (c) If, during the processing of an application after it has been determined or considered
21 to be complete, the department finds that additional information is necessary to evaluate or take
22 action on that application, the information may be requested in writing from the owner and
23 operator.

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

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

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

31 (b) Notwithstanding (a) of this section, the department may establish a phased schedule

1 for acting on operating permit applications submitted within the time required under
2 AS 46.14.220. A phased schedule must ensure that at least one-third of the applications
3 submitted during the initial application period will be acted on by the department during each of
4 the three years following the initial application period. The department shall give priority to the
5 issuance of permits for new facilities and modifications of existing facilities.

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

9 Sec. 46.14.230. REVIEW OF PERMIT ACTION. If aggrieved by a permit action under
10 this chapter, the owner and operator, a person who participated in the public comment process,
11 or a person who has a private, substantive, legally protected interest under state law that may be
12 adversely affected by the permit action may request an adjudicatory hearing under the
13 department's adjudicatory hearing procedures. After the issuance of an adjudicatory hearing
14 decision, a party to the hearing may obtain judicial review of that decision as provided in Alaska
15 Rules of Appellate Procedure.

16 Sec. 46.14.232. MONITORING. Monitoring by the owner and operator of stack
17 emissions or ambient air quality shall be required by the department only for purposes of
18 demonstrating compliance with applicable permit requirements. Monitoring requirements must
19 be reasonable and based on test methods, analytical procedures, and statistical conventions
20 approved by the federal administrator or the department or otherwise generally accepted as
21 scientifically competent. Unless otherwise agreed to by the owner and operator and the
22 department,

23 (1) the department may not require an owner and operator of a source to monitor
24 emissions or ambient air quality solely for the purpose of scientific investigation or research; and

25 (2) monitoring activities must be consistent with the applicable emission standards
26 and other permit or permit application requirements.

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

29 Sec. 46.14.240. GENERAL OPERATING PERMITS. After notice and opportunity for
30 public comment and hearing, the department may, unless the permit is disapproved by the federal
31 administrator, establish a general operating permit that would be applicable to more than one

1 facility determined by the department to be similar in source structure. A general operating
2 permit must contain provisions that meet the requirements of this chapter applicable to operating
3 permits. A general operating permit takes effect when the application is determined to be
4 complete unless the department notifies the applicant that the general permit is not applicable to
5 the facility.

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

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

18 (c) While a petition under (b) of this section is pending, compliance with an operating
19 permit issued under (a) of this section is considered to be compliance with the operating permit
20 program established under this chapter for purposes of AS 46.14.285.

21 Sec. 46.14.250. PAYMENT OF FEES. The owner and operator of a facility who is
22 required to apply for a permit under AS 46.14.205 shall pay the applicable fees established by
23 the department under AS 44.46.025(a). The owner and operator shall pay the fees to the
24 department or to the public entity designated by the department.

25 Sec. 46.14.255. INTEREST FOR NONPAYMENT. (a) The department may assess
26 interest against the owner and operator, computed under AS 45.45.010(a), after a fee is due under
27 this chapter and is unpaid.

28 (b) If a permittee has failed to pay a fee imposed under AS 46.14.250 or interest
29 imposed under (a) of this section, the department may, after 30 days' written notice to the
30 permittee refuse to issue or renew permits requested by the permittee or refuse to amend or
31 modify a permit when the amendment or modification is requested by the permittee.

1 Sec. 46.14.260. DURATION OF OPERATING PERMITS. (a) An operating permit
2 under this chapter, including an operating permit that contains a compliance schedule, shall be
3 issued for a fixed term of five years after the date of issue, except as provided for temporary
4 operations under AS 46.14.280 or unless a shorter term is requested by the permit applicant.

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

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

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

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

24 (d) The department shall provide written notice of intent to reopen and revise a permit
25 issued under this chapter to the owner and operator of a facility not less than 30 days before the
26 date the permit is to be reopened, except that the department may provide a shorter period in the
27 event of an emergency.

28 Sec. 46.14.267. AMENDMENT OF PERMIT. (a) A permit may be amended on
29 application of an owner and operator if the proposed amendments relate to operational changes
30 that do not

31 (1) result in an exceedance of allowable emissions specified in the permit;

1 (2) violate an express prohibition in the permit; or

2 (3) qualify as a modification.

3 (b) The application for an amendment under this section must contain

4 (1) a description of the change;

5 (2) schematic drawings, if appropriate, representing the change; and

6 (3) certification by the owner and operator that the proposed amendment meets
7 the criteria for amendment.

8 (c) The owner and operator shall file the proposed amendment with the department
9 personally or by certified mail. The department shall have seven work days after receipt in
10 which to object to the amendment. If the department fails to object, the owner and operator may
11 proceed in accordance with the amendment. If the department objects to the amendment, the
12 department shall notify the owner and operator in person or by certified mail. The department
13 shall state its objection in writing with particularity. If the owner and operator agree with the
14 objection, they may file an amendment that complies with the objection. If the owner and
15 operator disagree with the objection, they shall, within seven days of receipt of the objection,
16 inform the department of their disagreement and provide additional information necessary to
17 explain the disagreement. The department shall accept or reject the amendment within seven
18 days after receiving the additional information.

19 (d) The owner and operator may request a hearing to review the rejection of the
20 amendment within 30 days after receipt of the notice of rejection. Failure to request a hearing
21 within 30 days after the receipt of the rejection constitutes a waiver of the right of review.

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

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

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

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

1 issued under this chapter; or

2 (C) the permittee has failed to construct or modify a facility within the
3 time period specified in the construction permit, if any, required under AS 46.14.205(a);

4 (2) modify, or revoke and reissue a construction or operating permit if

5 (A) the department finds that the permit contains a material mistake;

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

8 (C) the owner and operator request the action.

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

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

23 Sec. 46.14.285. PERMIT AS SHIELD. (a) Compliance with an operating permit, order,
24 or other determination issued under this chapter is considered to be compliance with this chapter.

25 (b) Nothing in this section alters or affects

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

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

30 Sec. 46.14.290. TIMELY AND COMPLETE APPLICATION AS SHIELD. If an owner
31 and operator have submitted a timely and complete application for a permit or a permit renewal,

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

8 Sec. 46.14.295. UNAVOIDABLE MALFUNCTIONS. Excess emissions caused by
9 startup, shutdown, malfunction, or nonroutine repairs of a source including pollution control
10 equipment or process equipment may not be considered a violation of a permit or the emission
11 limitation or counted as an increase in emissions unless an ambient air quality standard is
12 exceeded. Nothing in this section limits the department's power to enjoin the emission or require
13 corrective action.

14 Sec. 46.14.297. INSPECTION. An officer or employee of the department designated by
15 the commissioner may, upon presentation of credentials and at reasonable times, enter upon or
16 through any premises of a facility regulated under this chapter to

- 17 (1) inspect and copy any records required to be maintained;
18 (2) inspect any source, monitoring equipment, or method required to be used; or
19 (3) sample any emissions that the owner and operator of the facility is required
20 to sample.

21 ARTICLE 3. MOTOR VEHICLE POLLUTION CONTROL PROGRAM.

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

28 (c) Unless otherwise exempted by law, a person shall maintain in operating condition any
29 element of the air pollution control system or mechanism of a motor vehicle that the department,
30 by regulation, requires to be maintained in or on the motor vehicle. Failure to maintain a
31 required system or mechanism in operating condition subjects the motor vehicle's registration to

1 suspension or cancellation. A motor vehicle whose registration has been suspended or canceled
2 under this subsection is not eligible for subsequent registration until the owner or operator obtains
3 certification from the department, based on a demonstration that the air pollution control system
4 or mechanism is restored to 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 46.14.030.

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;

9 (8) assist in developing and implementing modified work practices or technical
10 changes to processes to facilitate compliance with this chapter and regulations adopted under this
11 chapter as authorized under 42 U.S.C. 7661f(q)(7) and related federal regulations;

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

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

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

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

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

27 Sec. 46.14.420. POWER TO LIMIT PROGRAM. After consultation with the federal
28 administrator and the administrator of the United States Small Business Administration, and after
29 providing notice and opportunity for public hearing, the department may exclude from the scope
30 of the small business assistance program established in AS 46.14.410 a category or subcategory
31 of small business facilities that the department finds to have sufficient technical and financial

1 capabilities to meet the requirements of this chapter and federal law without the assistance
2 provided under AS 46.14.400 - 46.14.430.

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

6 (b) The panel consists of

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

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

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

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

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

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

24 (c) The compliance advisory panel shall

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

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

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

31 (4) make periodic reports to the administrator concerning the compliance of the

1 small business assistance program with requirements of 44 U.S.C. 3501 (Paperwork Reduction
2 Act), 5 U.S.C. 601 (Regulatory Flexibility Act), and 5 U.S.C. 504 (Equal Access to Justice Act);

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

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

7 ARTICLE 5. LOCAL PROGRAMS.

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

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

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

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

26 (2) local air contaminant sources; or

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

28 (d) A municipality or a local air quality district seeking department approval for a local
29 air quality control program shall enter into a cooperative agreement with the department that is
30 designed to avoid unnecessary duplication of responsibilities. The cooperative agreement must
31 include provisions specifying

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

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

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

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

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

11 (f) A municipality or a local air quality district administering a program under this
12 section shall administer its local air quality control program according to this chapter, regulations
13 adopted under this chapter, and its cooperative agreement under (d) of this section. A
14 municipality's or local air quality district's program may not be more stringent than the program
15 administered by the department.

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

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

26 (b) If, after the hearing, the department upholds the determination made in the written
27 notice, the department shall provide the municipality or local air quality district with a written
28 finding setting out the nature of the deficiencies and a description of the necessary action to be
29 taken in order for the program to prevent or control air pollution. The department shall provide
30 its finding to the municipality or district within 45 days after the closure of the public hearing
31 record. The department shall set a reasonable period of time for the municipality or local air

1 quality district to take corrective action in response to the department's finding.

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

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

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

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

27 ARTICLE 6. MISCELLANEOUS PROVISIONS.

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

1 Sec. 46.14.810. CONFIDENTIALITY OF RECORDS. Records, reports, and information,
2 and parts of records, reports, and information, other than emission data, in the department's
3 possession and control are considered confidential records and shall be kept confidential and in
4 separate files if,

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

8 (2) the records, reports, or information, or parts of the records, reports, or
9 information, would divulge production figures, sales figures, processes, production techniques,
10 or financial data 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) An
18 officer or employee of the department designated by the commissioner may assess an
19 administrative penalty against a person who violates, or causes, or allows to be violated a
20 provision of this chapter, a regulation adopted under this chapter, or a material term or condition
21 of an order, permit, or approval of the department under this chapter.

22 (b) An administrative penalty assessed under this section may not exceed \$1,000 a day
23 per source for each offense, subject to a maximum of \$5,000 a day for no more than 10 days,
24 regardless of the number of sources and offenses during those 10 days. An assessment under this
25 section may not be made more than one year after the date of violation. If a violation of a
26 provision, regulation, term, or condition continues from day to day, each day is a separate
27 offense. However, an assessment may not be made for a day that occurred before the owner and
28 operator received written notice of the violation. In determining the amount of a penalty assessed
29 under this section, the department may consider the effect of the offense on the public health or
30 the environment, the size of the business, the economic effect of the penalty on the business, the
31 violation's good faith effort to comply, prior history of compliance or noncompliance with this

1 chapter, the need to deter future offenses, the economic benefit of noncompliance realized by the
2 offender, the duration of the violation as established by credible evidence other than the
3 applicable test method, payment by the violator of penalties previously assessed for the same
4 violation, the seriousness of the violation, and other factors that the department considers
5 relevant. The department shall, by regulation, prepare, publish, and make available to interested
6 persons, a penalty policy describing the factors to be considered in setting penalties, the methods
7 for weighing the factors, and other aspects of penalty computation.

8 (c) If a penalty is assessed under this section, the department shall provide the assessment
9 notice to the person affected, by personal service or by certified mail, return receipt requested.
10 An administrative penalty assessed under this section becomes a final agency action 30 days after
11 service or mailing of the assessment notice unless an administrative hearing is requested by the
12 person against whom the penalty is assessed. Failure to request an administrative hearing within
13 30 days after service or mailing of the assessment notice constitutes a waiver of that person's
14 right to an administrative hearing. The department may extend the time periods specified in this
15 subsection for good cause.

16 (d) If an administrative hearing is requested, the department shall grant a hearing and
17 conduct the hearing in accordance with its adjudicatory hearing procedures. In the hearing, the
18 department bears the burden of proving the violation. After the hearing, the department may
19 modify, rescind, or affirm the administrative penalty. The modification, rescission, or affirmation
20 of a penalty under this subsection is a final agency action.

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

26 (f) In lieu of an administrative penalty under this section, the officer or employee
27 authorized under (a) of this section to assess the penalty may order a person to take appropriate
28 action to abate the violation within a reasonable period of time. An order to take appropriate
29 abatement action shall be issued for a first violation of a permit requirement that is not a
30 violation of an emission standard or limitation contained in the permit. The person to whom the
31 order is issued shall, within the time specified in the order, certify in writing to the department

1 that the violation has been abated. A person may not be assessed an administrative penalty and
2 given an order under this subsection for the same violation.

3 (g) Action under this section by the department is an exclusive remedy and prohibits the
4 department from otherwise enforcing this chapter, obtaining an injunction or recovering damages,
5 civil and criminal penalties, restoration expenses, investigation costs, court costs, attorney fees,
6 or other necessary expenses for the same violation.

7 (h) The assessment of an administrative penalty under this section does not affect the
8 obligation of a person to comply with this chapter or with a regulation, order, permit, or approval
9 of the department under this chapter.

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

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

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

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

19 (j) Settlement of an action under this section is not considered to be an admission of fact
20 or law, does not preclude the person from raising an available defense and may not otherwise be
21 used as evidence against the person in other proceedings, including permit approvals or renewals,
22 citizens' suits, or later enforcement actions, except that in an enforcement action brought under
23 AS 46.03.760 or 46.03.790, or in a proceeding to renew or issue a permit under this chapter,
24 evidence of more than three violations by a person for the same offense may be used for the
25 purpose of determining penalties, the terms and conditions of a permit, or whether to issue or
26 renew a permit.

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

29 (1) fees, penalties, and interest collected by the department under AS 46.14.250
30 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))
31 for state participation in the emission control permit program; and

1 (2) appropriations to the fund.

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

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

10 ARTICLE 7. GENERAL PROVISIONS.

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

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

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

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

18 Sec. 46.14.990. DEFINITIONS. In this chapter,

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

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

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

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

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

31 (6) "construct" or "construction" means to fabricate, erect, or install, or to make

1 a physical change, that would result in emissions;

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

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

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

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

8 (11) "emission standard" means a limit on the release of an air contaminant from
9 a facility, contaminant outlet, or fugitive emission source specified as

10 (A) a performance standard requiring a minimum efficiency or emission
11 reduction rate achieved by a device or activity; or

12 (B) an emission limitation establishing a maximum allowable quantity,
13 rate, or concentration to be released from the source;

14 (12) "equivalent emission limitation" means

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

19 (B) if the criteria of the early reduction program established in 42 U.S.C.
20 7412(i)(5) (Clean Air Act, sec. 112(i)(5)) are met, a limitation established under that
21 subsection and 42 U.S.C. 7412(j)(5) (Clean Air Act, sec. 112(j)(5));

22 (13) "excess emission" means the emission of an air contaminant in excess of an
23 applicable emission standard in a permit or other applicable regulation;

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

27 (15) "federal administrator" means the administrator of the United States
28 Environmental Protection Agency;

29 (16) "fugitive emissions" means emissions of an air contaminant that could not
30 reasonably be emitted from a contaminant outlet;

31 (17) "hazardous air contaminant" means a pollutant listed in or under 42 U.S.C.

1 7412(b) (Clean Air Act, sec. 112(b));

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

4 (19) "major facility" means a facility that emits or has the potential to emit at
5 least

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

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

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

9 (20) "malfunction" means a sudden and unavoidable failure of a source, including
10 air pollution control equipment and process equipment, or of a process to operate in a normal or
11 usual manner; "malfunction" does not include a failure that is caused entirely or in part by poor
12 maintenance or careless operation or another reasonably preventable upset condition or reasonably
13 preventable equipment breakdown;

14 (21) "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 (22) "operating permit" means a permit under AS 46.14.205(b);

18 (23) "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 (24) "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 (25) "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 (26) "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 (27) "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 (28) "register" or "registration" means vehicle registration under AS 28.10;

8 (29) "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 (30) "shutdown" means the cessation of operation of any source, including
16 pollution control equipment, process equipment or a process, for any purpose;

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

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

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

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

22 (32) "source" means a device, process, activity, or equipment that causes, or could
23 cause, a release of an air contaminant;

24 (33) "startup" means the setting into operation of any source, including associated
25 pollution control equipment, process equipment or process, for any purpose;

26 (34) "TPY" means tons per year.

27 * Sec. 3. AS 14.09 is amended by adding a new section to read:

28 Sec. 14.09.030. ALTERNATIVE-FUELED BUSES. The department shall develop plans
29 to encourage contractors that provide school bus transportation to procure alternative-fueled
30 buses. In this section, "alternative-fueled" means capable of operating on a fuel such as
31 compressed natural gas, liquefied petroleum gas, liquefied natural gas, methanol, ethanol, or

1 electricity that, compared to operation on regular fuel, results in lower emissions of oxides of
2 nitrogen, volatile organic compounds, carbon monoxide, or particulates.

3 * Sec. 4. AS 36.30 is amended by adding a new section to article 1 to read:

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

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

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

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

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

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

22 Sec. 28.10.423. EMISSION CONTROL INSPECTION PROGRAM FEES. In addition
23 to the annual registration fee specified in AS 28.10.421, a \$1 fee is imposed upon every vehicle
24 required to be inspected under an emission control program established under AS 46.14.300 or
25 46.14.500 [AS 46.03.210]. This fee shall be collected at the same time and in the same manner
26 as the registration fee.

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

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

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

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

3 (1) provide transportation systems;

4 (2) provide water pollution control;

5 (3) provide air pollution control in accordance with AS 46.14.500 [AS 46.03.140 -
6 46.03.230];

7 (4) license day care facilities;

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

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

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

12 (1) provide transportation systems;

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

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

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

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

20 (6) provide water pollution control;

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

23 (8) provide for economic development;

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

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

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

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

30 (13) contain, clean up, or prevent a release or threatened release of oil or a
31 hazardous substance, and exercise a power granted to a municipality under AS 46.04, AS 46.08,

1 or AS 46.09; the borough shall exercise its authority under this paragraph in a manner that is
2 consistent with a regional master plan prepared by the Department of Environmental
3 Conservation under AS 46.04.210.

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

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

7 (1) provide transportation systems;

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

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

11 (4) provide water pollution control;

12 (5) license day care facilities.

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

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

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

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

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

21 (2) the emission control permitting program and the motor vehicle pollution
22 control program under AS 46.14 [AIR QUALITY PERMITS UNDER AS 46.03.140 AND
23 46.03.160];

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

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

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

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

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

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

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

1 AS 44.62.360 - 44.62.400 are inconsistent with the manner in which proceedings are initiated
2 under the provisions of AS 46.03 and AS 46.14;

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

4 (f) A person who violates or causes or permits to be violated a provision of
5 AS 46.03.250 - 46.03.314, AS 46.14, or a regulation, a lawful order of the department, or a
6 permit, approval, or acceptance, or term or condition of a permit, approval, or acceptance issued
7 under AS 46.03.250 - 46.03.314 or AS 46.14 is liable, in a civil action, to the state for a sum
8 to be assessed by the court of not less than \$500 nor more than \$100,000 for the initial violation,
9 nor more than \$10,000 for each day after that on which the violation continues, and that shall
10 reflect, when applicable,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 Sec. 46.03.875. REMEDIES CUMULATIVE. Except as provided in AS 46.14.830,
9 [ALL] remedies provided by this chapter, [OR] AS 46.04, or AS 46.14 are cumulative, and the
10 securing of relief, whether injunctive, civil, or criminal, under a section of this chapter, [OR]
11 AS 46.04, or AS 46.14 does not stop the state from obtaining relief under any other section of
12 this chapter, [OR] AS 46.04, or AS 46.14.

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

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

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

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

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

28 (6) "hazardous substance" means an element or compound that, when it enters into
29 the atmosphere or into or on the surface or subsurface land or water of the state, presents an
30 imminent and substantial danger to the public health or welfare, or to fish, animals, vegetation,
31 or any part of the natural habitat in which fish, animals, or wildlife may be found; or (B) a

1 substance defined as a hazardous substance under 42 U.S.C. 9601 - 9657 (Comprehensive
2 Environmental Response, Compensation, and Liability Act of 1980); "hazardous substance" does
3 not include uncontaminated crude oil or uncontaminated refined oil in an amount of 10 gallons
4 or less;

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

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

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

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

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

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

20 * Sec. 27. AS 46.03.140, 46.03.150, 46.03.160, 46.03.170, 46.03.180, 46.03.190, 46.03.210,
21 46.03.220, 46.03.225, 46.03.230, and 46.03.245 are repealed.

22 * Sec. 28. REGULATIONS. (a) The Department of Environmental Conservation may adopt
23 regulations as authorized under AS 46.14, enacted by sec. 2 of this Act, and other statutory authority,
24 to implement changes made by this Act. Regulations adopted under this section may not take effect until
25 the enabling statute takes effect under sec. 32 or sec. 33 of this Act.

26 (b) Notwithstanding the repeal of AS 46.03.140 - 46.03.245 by sec. 27 of this Act, the
27 regulations adopted under those sections that are in effect on the day immediately preceding the effective
28 date of sec. 1 of this Act remain in effect until amended or repealed by regulations adopted under this
29 Act.

30 * Sec. 29. COOPERATION. The Department of Transportation and Public Facilities and the
31 Department of Environmental Conservation shall cooperate with each other as necessary to achieve

1 implementation of AS 36.30.097, enacted by sec. 4 of this Act, by July 1, 1994.

2 * Sec. 30. REPORT TO LEGISLATURE. (a) By January 31, 1993, the Department of
3 Environmental Conservation shall submit a report to the legislature that includes

4 (1) the department's recommendations for legislation to establish an air quality control
5 permit fee program that will

6 (A) meet the requirements of 42 U.S.C. 7401 - 7671q (Clean Air Act), as
7 amended; the department shall solicit the comments of appropriate officials in the federal
8 Environmental Protection Agency as to the legal adequacy under federal law of the recommended
9 legislation and submit to the legislature any comments received from the federal officials;

10 (B) equitably allocate direct and indirect costs of the program among owners and
11 operators of facilities that are required to have permits under AS 46.14; and

12 (C) ensure maximum efficiency and minimize total cost of all program elements
13 that will be financially supported by the permit fees, including staffing for permit applications
14 and meetings;

15 (2) the department's recommendations for a fee schedule for permits issued under
16 AS 46.14, including

17 (A) a detailed discussion of the facts and rationale for the proposed schedule;

18 (B) a detailed comparison between the cost and staffing data for the department's
19 air quality permit program and other similar regulatory programs administered by the department,
20 based on the number of permits issued or otherwise processed annually;

21 (C) a comparison of the proposed fee schedule with the fee schedules of at least
22 five other states that have air quality permit programs that are operating in compliance with 42
23 U.S.C. 7401 - 7671q (Clean Air Act), as amended; and

24 (D) a recommended late payment penalty; and

25 (3) a summary of the public comments received under (b) of this section, including
26 alternative fee schedules suggested by the public, and the department's analysis of the public comments.

27 (b) In preparation for submitting the final report required under (a) of this section, the
28 Department of Environmental Conservation shall, by November 15, 1992, publish a draft report for
29 public review and comment. The draft report must contain the information required under (a)(1) and
30 (2) of this section.

31 * Sec. 31. Sections 3 and 4 of this Act take effect July 1, 1994.

1 * Sec. 32. AS 46.14.010, 46.14.015, 46.14.020, 46.14.030, 46.14.200(a) and (c) - (e),
2 46.14.205(a)(1) - (3) and (5), 46.14.210, 46.14.225, 46.14.230, 46.14.232, 46.14.235, 46.14.250,
3 46.14.255, 46.14.270, 46.14.280, 46.14.295, 46.14.297, 46.14.300, 46.14.400, 46.14.410, 46.14.420,
4 46.14.430, 46.14.500, 46.14.510, 46.14.520, 46.14.800 - 46.14.850, 46.14.900, and 46.14.990, enacted
5 by sec. 2 of this Act, and secs. 1 and 5 - 30 of this Act take effect immediately under AS 01.10.070(c).
6 * Sec. 33. AS 46.14.200(b), 46.14.205(a)(4) and (b), 46.14.220, 46.14.222, 46.14.240, 46.14.245,
7 46.14.260, 46.14.265, 46.14.267, 46.14.275, 46.14.285, and 46.14.290, enacted by sec. 2 of this Act, take
8 effect on the day after the day the federal administrator approves the state permit program under 42
9 U.S.C. 7661a(d). The commissioner of environmental conservation shall immediately notify the
10 lieutenant governor and the revisor of statutes of the day of the federal administrator's approval.

S B

3 8 4

STATE COMMITTEE REPORT
FIRST COMMITTEE OF REFERRAL

JR

DATE: 2/5/92

FURTHER: Finance

Date of 5-Day Notice: 3-5-92
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: May 6, 1992

Resources Committee considered SB 384

"An Act amending the purposes for which money in the oil and hazardous substance release response fund may be expended) and to reimbursements due to that fund; and providing for an effective date."
be replaced with

and recommends:

replace with _____ CS SB 384 (Res)

same title
 new title
 technical title change (HB only)

Don't know

attaches amendment(s)

no
+ rpts it th as plus

adopts _____ Letter of Intent

further referral to the _____

CS (Res) 384
& DEC to CS
& REV to CS
Forthcoming

do pass

do not pass

no recommendation

individual recommendations

FN

NEW FISCAL NOTES: Dept/Date

zero fiscal notes _____

fiscal notes DEC

PREVIOUS FISCAL NOTES: Dept/Date

Governor's bill with fiscal notes:

zero fiscal notes _____

fiscal notes _____

appropriation--no fiscal note

DO PASS:

OTHER RECOMMENDATIONS:

See Coste Ctr
[Signature]
[Signature]
[Signature]

Rich Halford NO REC
[Signature] No Rec

[Signature]
Chair: Signature and Recommendation
No Rec



Board of Storage Tank Assistance

410 WILLOUGHBY AVENUE
JUNEAU, ALASKA 99801
(907) 465-5200
FAX (907) 465-5218

Walter J. Hickel, Governor

POSITION PAPER

IN SUPPORT OF:

Senate Bill No. 384 (SB384)

WITH AMENDMENTS

SUBJECT: "An Act amending the purposes for which money in the oil and hazardous substance release response fund may be expended and to reimbursements due to that fund; and providing for an effective date"

The Board of Storage Tank Assistance supports Senate Bill Number 384 amending the oil and hazardous substance release response fund with the following changes to be included as amendments.

(1) Limit expenditures from the oil and hazardous substance response fund to only pay for grants and loans described in AS 46.03.410 (b)(2) and (3); and

(2) Pay the expenses incurred under the underground petroleum storage tank reimbursement program authorized by sec. 7, ch.96, SLA 1990.

The state underground storage tank program has been implemented to assist owners and operators determine the extent and subsequently clean up contamination resulting from underground petroleum storage tanks (UST's), to close out their tanks properly if necessary and to upgrade existing tanks to new performance standards that will prevent future leaks. The UST Assistance Programs are pollution prevention and spill response activities that would be within the existing scope of the oil and hazardous substance release response fund.

A considerable amount of time, effort and funds will need to be invested to assess, cleanup and upgrade these tanks to protect the public health and environment and keep Alaska's small business tank owners and operators in business. It is also important to provide sufficient funding for underground petroleum storage tank owners and operators to adequately clean up their sites to become insurable to satisfy the EPA's financial responsibility requirements.

The financial assistance programs established by the original enabling legislation passed in 1990 are (1) reimbursements for a portion of the costs to conduct a tank tightness test or a site assessment, (2) grants for a portion of the costs of either upgrading (including replacing) or closing (including removing) a pre-1988 tank, (3) grants and loans for the cost of cleanup associated with a release from an underground petroleum storage tank and (4) reimbursement for upgrading, closing, or cleanup of an UST done after the effective date of the EPA regulations (December 22, 1988) and before September 5, 1990, the effective date of Alaska's UST laws.

At the present time the grant requests far exceed the available funds. Concerns for continued appropriations from the general fund have prompted a need for identifying an alternative funding source for this program. The state underground petroleum storage tank program is based on providing technical, educational, and financial assistance to Alaska's underground tank owners. It is imperative that a secure funding source be in place to address the intent and purpose of that program. Senate Bill 384 provides assurance that the original intent and purpose of the Underground Storage Tank Program will be realized.

Dated: 2/24/92

For and on behalf of the
BOARD OF STORAGE TANK ASSISTANCE,

John C. Barnett,

POSITION PAPER

BOARD OF STORAGE TANK ASSISTANCE



Alaska Department of Environmental Conservation
Underground Storage Tanks
Financial Assistance Program



**TANK TIGHTNESS TESTING AND SITE
ASSESSMENT INCENTIVE PROGRAM**

THE PROGRAM

A fund has been created to provide financial assistance to the owners and operators of underground petroleum storage tanks (USTs). House Bill 220 became Alaska Statute, effective on September 5, 1990, making assistance available in the form of several programs. The Tank Tightness Testing and Site Assessment Incentive Program provides money directly to the owner/operator specifically to reimburse costs for tank tightness tests or site assessments to determine if there has been a release of petroleum.

Reimbursements are limited to expenditures incurred after September 5, 1990 and before March 5, 1992. Fifty percent of the actual costs, not to exceed \$300 per tank for tank tightness tests up to a maximum of \$1200 per facility and \$800 per tank for site assessments up to \$3200 per facility, will be reimbursed on a first-come, first-served basis. The owner/operator must submit copies of **PAID INVOICES** indicating proof of payment of the actual expenditures with the application.

The owner or operator may choose to conduct either a site assessment or a tank tightness test to meet the state's tank registration requirements. However, a site assessment provides a more accurate analysis to determine whether or not a release has occurred. A tank tightness test will not indicate leaks which have occurred and been repaired, or contamination due to spills or overfills. Most insurance companies require assessment results before issuing a policy for an UST site. If the site assessment confirms a release, the owner/operator may apply for financial assistance under the Tank Cleanup Grant and Loan Program.

It is the responsibility of the owner/operator to ensure that work done at the facility is in accordance with all applicable state and federal regulations.

Funding for this program is limited.

ELIGIBILITY

Eligibility for this program is restricted to owners or operators of facilities with underground storage tank (UST) systems installed before and in use on September 5, 1990. The owner/operator must be in compliance with all state and federal laws applicable to underground petroleum storage tank systems. Costs must have been incurred on or after September 5, 1990 but no later than March 5, 1992. State or federally owned underground storage tank systems are not eligible for this program.

DEADLINE

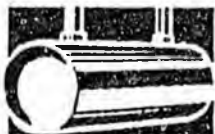
Your application must be received by the DEC no later than March 5, 1992 to be eligible for reimbursement.

Applications for Financial Assistance Will Not Be Processed Unless the Department of Environmental Conservation has Received the State Tank Registration Form and the Appropriate Annual Registration Fee.

TANK TESTING AND SITE ASSESSMENT
PROGRAM

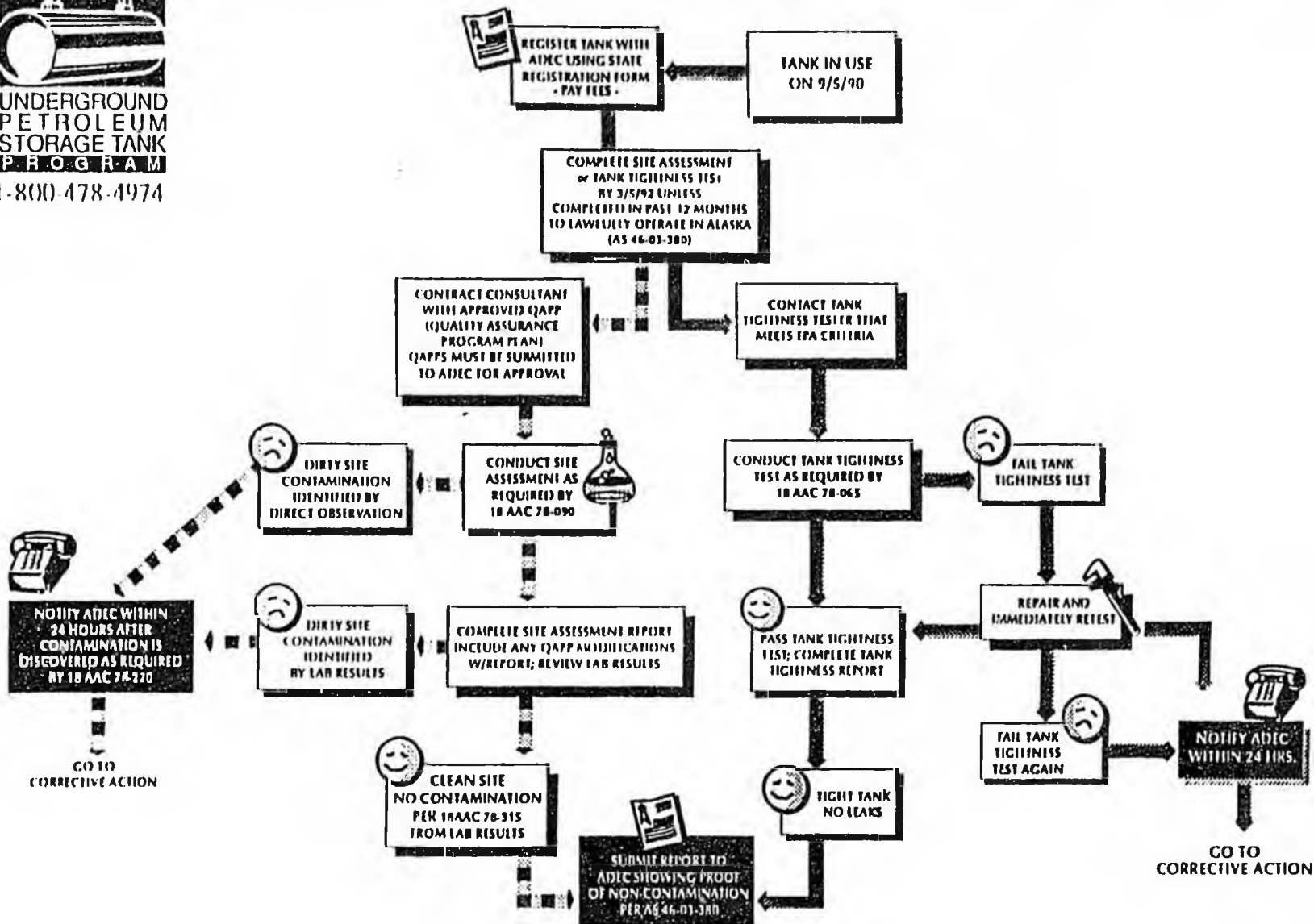
THE UNDERGROUND STORAGE TANK PROCESS

Registration Requirements to Operate a UST



**UNDERGROUND
PETROLEUM
STORAGE TANK
PROGRAM**

1-800-478-4974



Article 5 - The Storage Tank Assistance Fund

Part of the Underground Storage Tank legislation passed by the legislature established a seven-member **Board of Storage Tank Assistance**. The commissioners of the departments of Environmental Conservation and Transportation and Public Facilities are the government members. Each of the five public members are required to have specialized knowledge in the UST field. Members serve staggered 4 year terms and the Board is scheduled to sunset on June 30, 1996.

The Board adopted regulations dealing with the financial assistance programs. The Board must also approve any Department regulation specifying allowable technologies for testing, containment and cleanup, or corrective action. The Department must also consult with the Board before adopting any regulations on cleanup standards. The department and the **Board of Storage Tank Assistance** also administer four financial assistance programs through this section:

- (1) **Reimbursement** for part of the costs for tank tightness AND for site assessments done by **March 5, 1992**. Reimbursement is limited to **\$300** for tank tightness tests and **\$800** for site assessments. Reimbursement is limited to 4 tanks/facility.
- (2) **Grants for 60%**, up to \$60,000, for the costs of upgrading (including replacement) or closing (including removing) a pre-1988 UST. Upgrading includes adding leak detection, spill and overfill prevention, or spill protection.
- (3) **Grants for 90%**, up to \$1,000,000 per occurrence, for the cost of cleanup of a release from a regulated UST. The owner is responsible for 10% of the cost. Loans are available for that 10% up to a maximum of \$25,000.
- (4) **Reimbursements** for upgrading, closing, or cleanup of an UST done after **December 22, 1988** (when EPA regulations went into effect) and before **September 5, 1990** (the effective date of the State Statute HB220). The application deadline for this reimbursement was **March 5, 1991**. Amounts are limited to 60% of upgrading or closing; 90% for cleanup, to a dollar maximum of \$200,000 per owner or operator.

In 1991, the Board of Storage Tank Assistance allocated these amounts in the above categories:

(1) Reimbursement of tank tightness tests & Site assessments	\$2.3 million
(2) Grants for closures and upgrades:	\$1.5 million
(3) Grants for cleanups	\$1.5 million
(4) Reimbursements for work done prior to September 5, 1990	\$ 0

Money allocated is subject to the availability of annual legislative appropriations. Tank work eligible for funding remains eligible for funding in future years.

Emergency grants are available if a release poses an imminent health threat.

Important dates and phone numbers

Deadline for financial responsibility for owners of 1-12 USTs	December 1992 (may be delayed to 12/93)
1992 UST Registration deadline	December 31, 1991
Deadline for tightness tests/site assessments for USTs installed before 12-12-88	March 5, 1992

Release detection implementation deadlines:

for systems installed before 1970	Past deadline
for pressurized piping	Past deadline
for systems installed 1970-1974	December 22, 1991
for systems installed 1975-1979	December 22, 1992
for systems installed 1980-1988	December 22, 1993

<u>Upgrade to 1988 standards</u>	December 22, 1998
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State Financial assistance deadlines

Tank upgrade grants, closure grants cleanup grants and cleanup loans (for funding in 1992)	December 31, 1991
Tightness test/site assessment reimbursements	March 5, 1992
Final deadline for applications for upgrade, closures, and cleanup	July 1, 1994

For further information on USTs:

General:	1-800-478-4974 (located in Juneau)
Financial Assistance:	563-6529 (ask for UST Financial Assistance Program)
Worker Certification:	1-800-478-4974 (Juneau)
Regional UST/LUST Programs	
Anchorage/Southcentral	563-6529
Fairbanks/Interior	451-2360

* * * * *

PERSISTENCE....NOTHING IN THE WORLD CAN TAKE THE PLACE OF PERSISTENCE. TALENT WILL NOT;NOTHING IS MORE COMMON THAN UNSUCCESSFUL MEN WITH TALENT. GENIUS WILL NOT; UNREWARDED GENIUS IS ALMOST A PROVERB. EDUCATION WILL NOT; THE WORLD IS FULL OF EDUCATED DERELICTS. PERSISTENCE AND DETERMINATION ALONE ARE OMNIPOTENT. CALVIN COOLEGGE

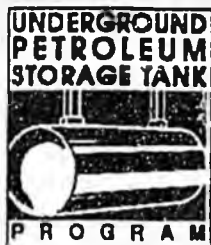
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THE DIFFERENCE BETWEEN A SUCCESSFUL PERSON AND OTHERS IS NOT A LACK OF KNOWLEDGE, BUT RATHER A LACK OF WILL. VINCENT LOMBARDI

*

TEAMWORK... COMMING TOGETHER IS A BEGINNING. KEEPING TOGETHER IS PROGRESS. WORKING TOGETHER IS SUCCESS. HENRY FORD

*



Board of Storage Tank Assistance

410 WILLOUGHBY AVENUE
JUNEAU, ALASKA 99801
(907) 465-5200
FAX (907) 465-5218

Walter J. Hickel, Governor

BOARD MEMBERS:

Janice Adair Juneau 465-5050 FAX 4655070
ADEC, 410 Willoughby Ave. Juneau, AK 99801

Ed Anders Fairbanks 488-6547 or 488-9501
7785 Chena Hot Springs Rd, Fairbanks AK 99712

John Bertholl Juneau 789-1917 FAX 7890432
P.O. Box 210103, Auke Bay, AK 99821

Earl Billingslea Soldotna 262-2250 FAX 2627180
P.O. Box 76, Soldotna, AK 99669

Keith Gerken Juneau 465-3900 FAX 5868365
DOT, Box Z, Juneau, AK 99811

Bob Gilfilian * Anchorage 277-2021 FAX 2748683
255 E. Fireweed Lane, Suite 102, Anch. AK, 99503

Ward Livingston Anchorage 562-2266 FAX 5636483
4220 B Street, Anchorage, AK 99503

* Board Chairman

EXECUTIVE DIRECTOR: John Barnett Juneau 465-5200 FAX 4655218
UST Program, 410 Willoughby Ave. Juneau, AK 99801

DEPT. OF ENVIRONMENTAL CONSERVATION

OFFICE OF THE COMMISSIONER
410 WILLOUGHBY AVENUE, SUITE 105
JUNEAU, AK 99801-1795

Phone: (907) 465-5000
Fax: (907) 465-5070

Date: 2-26-92

By: Joe A. Tondor
Commissioner

POSITION PAPER

SB 384, amending the purposes for which money in the oil and hazardous substance release response fund may be expended and to reimbursements due to that fund; and providing for an effective date.

The Department of Environmental Conservation supports stable funding for the underground storage tank (UST) program in order to allow the owners and operators of regulated USTs to meet the financial responsibility requirements of the EPA. We believe the Oil and Hazardous Substance Release Response (470) Fund will meet the EPA's requirements as a state assurance fund, and thus support using it to cover some costs associated with the State's UST program. The Department's support for this legislation is conditioned on inclusion of the following amendments to SB 384:

1) Amend the title to read: "An Act authorizing use of the oil and hazardous substance release response fund for certain activities related to the underground petroleum storage tank program, and terminating that authorization; and providing for an effective date.

This amendment will change the title to accurately reflect the subject of the legislation.

2) On Page 4, change subparagraph 8 to read: "(8) pay for the grants and loans described in AS 46.03.410(b)(2) and (3);

3) Add a subparagraph (9) to Section 3 which would read: (9) pay for the cost of enforcement of AS 46.03.360 - 46.03.450."

The first of these two amendments will allow the 470 Fund to be used only for the grants and loans to UST owners, leaving the administration of the program to be funded through general funds and tank registration fees. The EPA requirements for financial responsibility dictate that owners and operators be able to demonstrate the financial ability to cleanup a release from a UST. Thus, the Department believes that the 470 Fund should not be used for the program's administrative costs.

We also believe however that we have a duty to protect the investment the state has made and will continue to make in the cleanup and replacement of USTs. This will be accomplished through enforcing the standards for UST maintenance and operation contained in DEC's UST regulations. Subsection 9 will ensure the Department has the continuing ability to ensure regulatory compliance.

4) Add a provision which would repeal the use of the 470 Fund for Subparagraph (8) on June 30, 1996.

The state's UST financial assistance program was envisioned as a time-limited program. Federal law requires that all tanks be upgraded to the new regulatory standards by 1998. State law requires that all applications for financial assistance be filed by July 1, 1994. In addition, the Board of Storage Tank Assistance sunsets on June 30, 1996. This amendment would have the authority for using the 470 Fund for the grants and loans expire on the same date as the Board, which is two years after the last of the applications will be filed. During those two years, the state will be able to wind up cleanup activities.

DIVISION OF LEGAL SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

240 Main Street, Suite 500
Juneau, Alaska 99801-2101

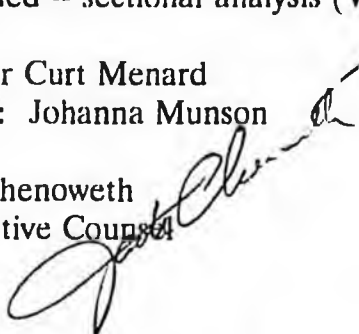
MEMORANDUM

February 18, 1992

SUBJECT: Senate Bill 384, amending the purposes for which money in the oil and hazardous substances release response fund may be expended -- sectional analysis (Work Order No. 7-LS1926A)

TO: Senator Curt Menard
ATTN: Johanna Munson

FROM: Jack Chenoweth
Legislative Counsel



The measure expands use of the so-called "470 fund" -- properly called the oil and hazardous substance release response fund -- to allow its expenditure for the programs and administrative costs associated with ch. 96, SLA 1990, legislation relating to investigation, containment, and cleanup of leaking underground storage tanks.

The measure's principal operative provision is **bill section 3**. That bill section adds a new provision, paragraph 8, to AS 46.08.040, permitting use of the fund balance to pay costs of regulation and pollution prevention under various enumerated programs related to motor fuel, petroleum, and chemical storage tanks.

A related provision, **bill section 5**, exempts the payments made from the fund for purposes of storage tank cleanup from the requirement that the commissioner of environmental conservation seek reimbursement of the expenditures.

The remaining codified bill sections make necessary related changes. **Bill sections 1 and 4** make technical corrections. Current law limits use of the oil and hazardous substance release response fund for capital improvements; **bill section 2** makes an exception to that limitation, explicitly permitting use of the oil and hazardous substance release response fund for a capital improvement in conjunction with the storage tank program.

The changes made in the two uncodified substantive sections, bill sections 6 and 7, give the measure retrospective application. Section 7, ch. 96, SLA 1990 authorized

Senator Curt Menard
February 18, 1992
Page 2

an underground petroleum storage tank reimbursement assistance program to reimburse persons making expenditures relating to leaking tanks after December 21, 1988, and until six months after the effective date of the 1990 legislation. **Bill section 6** authorizes use of the fund balance to pay the expenses incurred under that reimbursement program, while **bill section 7** applies to any reimbursement payments that are payable on and after the date of enactment of that reimbursement program, in effect permitting payment from the fund of all claims for reimbursement allowed by sec. 7, ch. 96, SLA 1990.

Bill section 8 gives the measure an immediate effective date.

JBC:mi
92-027.mai



BP EXPLORATION

David Prilchard
Senior Vice President
Prudhoe Bay Unit
Alaska

BP Exploration (Alaska) Inc.
900 East Benson Boulevard
P.O. Box 196612
Anchorage, Alaska 99519-6612
(907) 564-4029

March 6, 1992

The Hon. Eileen MacLean, Co-Chair
The Hon. Mike Navarre, Co-Chair
House Finance Committee
P. O. Box V
Juneau, AK 99811

New Uses of the Oil Spill Response Fund (AS 46.08.010)

Dear Representative MacLean and Representative Navarre:

As Senior Vice President of BP Exploration (Alaska) Inc. with responsibility for the Prudhoe Bay field, I am writing to express BP's concern about the new proposals under consideration to expand the uses of the oil spill response fund (the "470 fund") under AS 46.08.010.

The principal source of funding for the 470 fund is the nickel-a-barrel oil conservation surcharge to the production tax under AS 43.55.-200 - 240. Under these statutes the surcharge is to be suspended when the balance in the 470 fund exceeds \$50 million and is to be temporarily reimposed as needed to replenish the fund to \$50 million when its balance falls below that level.

When the conservation surcharge was enacted as part of a package of oil spill legislation in 1989, the fiscal notes for that legislation indicated that the revenues from the surcharge through FY 92 would be enough to cover the additional demands on the 470 fund for over 25 years. However, since 1989 several new uses have been created for the 470 fund. These new uses have delayed the time when the surcharge goes into suspension and will shorten the time it will be suspended before being needed to replenish the fund. To date more than \$60 million has been paid under the surcharge.

If enacted, the new uses being proposed for the 470 fund would ensure that the conservation surcharge will continue indefinitely. Rather than begin a limited duration surcharge to raise \$50 million to be readily available for the State to respond to a spill, the conservation surcharge begins to look like a permanent tax increase aimed at the exploration and production industry.

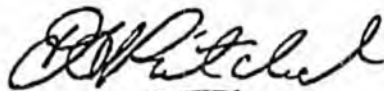
The Hon. Eileen MacLean, Co-Chair
The Hon. Mike Navarre, Co-Chair
Page 2

We are striving to reduce costs as much as we can at Prudhoe Bay and the other North Slope fields, consistent with safe and prudent operations. The ongoing decline in production means we cannot afford to let costs rise, nor even let them remain flat. Only by actively reducing our costs of operating will we be able to develop and recover the full potential of the resources on the Slope. Making the oil conservation surcharge a permanent tax increase runs counter to the need to reduce costs. And although it may seem modest, it will probably be viewed inside and outside the oil industry as a sign of instability in Alaska's tax structure.

We are not questioning the need to clean up leaking underground storage tanks, nor are we doubting the merits of the other uses that have been proposed for the 470 fund. The worthiness of these environmental initiatives is not the issue. The issue is whether Alaska needs to raise oil taxes in order to address these initiatives. We at BP believe it is neither necessary nor prudent to raise oil taxes at this time.

Very truly yours,

BP EXPLORATION (ALASKA) INC.



David J. Pritchard
Senior Vice President

cc: Finance Committee Members

Testimony of the
Alaska Oil and Gas Association
before the
Alaska State House of Representatives
Finance Committee
on
CSHB 264, An Act authorizing use
of the oil and hazardous substance
response fund for certain
activities related to the underground
petroleum storage tank program

March 6, 1992

I am William W. Hopkins, Executive Director of the Alaska Oil and Gas Association. The Alaska Oil and Gas Association (AOGA) is a trade association whose member companies conduct the majority of oil and gas exploration, production and transportation in Alaska. AOGA appreciates this opportunity to express its position regarding CSHB 264.

AOGA strongly opposes CSHB 264 for several important reasons. This bill would, in effect, impose a hidden but real tax increase on all oil production in Alaska. It would impose unfair costs to the oil producers in Alaska to fund a program to correct underground storage tank problems over which they have no control and are not associated with crude oil production. Those costs are largely unknown but could be potentially significant based on the thousands of various underground tanks throughout Alaska. In addition, the bill does not require the state to seek reimbursement for costs of expenditures from responsible parties. We urge the state to consider alternatives and the potential impact of this proposed legislation on the oil producers.

Alaska Oil and Gas Association
Testimony on CSHB 264
March 6, 1992
Page 2

We understand that the Federal Superfund Reauthorization Legislation enacted in October 1986 has a provision to impose a 0.1 cent per gallon motor fuels excise tax as a revenue source to fund a separate Federal Leaking Underground Storage Tank Fund. Under certain conditions, that fund can pay up to 90% of any state's cost for cleanup resulting from a discharge from an underground storage tank. To use the federal fund, Alaska may need to establish its own fund to cover its 10% corrective action costs, but the 470 Fund is not the appropriate source.

In summary, CSHB 264 would place an unfair tax burden on oil producers to pay for problems not related to production. We urge this committee to reject it. Thank you for this opportunity to comment.

TESTIMONY OF KENNETH M. REITHER
TAX COUNSEL, EXXON CORPORATION

HOUSE FINANCE COMMITTEE
1:30 P.M., MARCH 6, 1992

HB 264

MY NAME IS KENNETH REITHER. I AM APPEARING ON BEHALF OF MY EMPLOYER, EXXON CORPORATION.

IN 1989, AFTER THE OIL SPILL IN PRINCE WILLIAM SOUND, THE LEGISLATURE PASSED THREE RELATED BILLS:

- THE FIRST WAS SB 261, WHICH REQUIRED THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION TO PREPARE STATE AND REGIONAL OIL AND HAZARDOUS SUBSTANCE RELEASE CONTINGENCY PLANS. THE COST OF DOING SO WAS TO BE PAID OUT OF THE 470 FUND.
- THE SECOND WAS SB 264, WHICH ESTABLISHED THE OIL AND HAZARDOUS SUBSTANCE RESPONSE OFFICE, CORPS AND DEPOTS. THIS BILL LIKEWISE AUTHORIZED USE OF 470 FUND MONEYS TO PAY FOR SUCH COSTS.
- THE THIRD WAS SB 260, WHICH ESTABLISHED A FIVE CENTS PER BARREL CONSERVATION SURCHARGE ON OIL PRODUCED IN ALASKA, THE REVENUES TO GO INTO THE 470 FUND.

ONE PURPOSE OF THE SURCHARGE WAS TO PAY FOR THE ADDITIONAL COSTS RESULTING FROM SB 261 AND SB 264 JUST MENTIONED. BUT THE PRIMARY PURPOSE, AS I READ THE COMMITTEE MINUTES AND OTHER LEGISLATIVE MATERIAL FROM THE DAY, WAS TO BUILD A \$50 MILLION FUND SO THAT THE STATE COULD HAVE AN INDEPENDENT SPILL CONTAINMENT AND CLEANUP CAPABILITY.

REVENUES FROM THE 5 CENTS PER BARREL SURCHARGE WERE PROJECTED TO BE MORE THAN \$25 MILLION A YEAR. THE EXPECTATION AT THE TIME WAS THAT THE \$50 MILLION CAP WOULD SOON BE REACHED, SUSPENDING THE SURCHARGE.

IN 1990, HOWEVER, THE LEGISLATURE PASSED THREE BILLS EXPANDING THE PERMISSIBLE USES OF MONEYS IN THE 470 FUND. THESE INCLUDED:

- HB 566, WHICH, AMONG OTHER THINGS, ESTABLISHED THE ALASKA STATE EMERGENCY RESPONSE COMMISSION,
- HB 567, UNDER WHICH 470 FUNDS WERE TO BE USED BY DEC FOR REVIEW OF OIL DISCHARGE PREVENTION AND CONTINGENCY PLANS, TO CONDUCT TRAINING AND RESPONSE EXERCISES, INSPECTIONS, TESTS AND OTHER COSTS, AND

- HB 578, CREATING A CITIZENS' OVERSIGHT COUNCIL ON OIL AND OTHER HAZARDOUS SUBSTANCES.

SIMILARLY IN 1991, THE LEGISLATURE PASSED TWO BILLS FURTHER EXPANDING THE USES OF 470 FUND MONEYS. THESE WERE:

- SB 25, ALLOWING ADVANCES OF MONEY TO VILLAGES AND MUNICIPALITIES TO CARRY OUT AN EMERGENCY FIRST RESPONSE TO A RELEASE OR THREATENED RELEASE OF OIL OR A HAZARDOUS SUBSTANCE, AND
- SB 165, COVERING COSTS TO DESIGN, RETROFIT AND CONSTRUCT VESSELS OF THE ALASKA MARINE HIGHWAY TO HAVE SPILL RESPONSE CAPABILITY.

THERE ARE SEVERAL BILLS UNDER CONSIDERATION IN THIS LEGISLATIVE SESSION WHICH WOULD FURTHER EXPAND THE USES OF MONEYS IN THE 470 FUND. HB 264 BEFORE THIS COMMITTEE TODAY WOULD INCLUDE COSTS RELATING TO UNDERGROUND STORAGE TANKS. OTHERS ADDRESS PUBLIC DRINKING WATER SUPPLIES, GRANTS FOR LOCAL EMERGENCY SERVICES, AND COSTS RELATING TO AIR QUALITY.

I AM NOT HERE TO COMMENT ON THE NEED TO ADDRESS UNDERGROUND STORAGE TANKS OR THE MERITS OF THE OTHER PROPOSALS, ONLY TO COMMENT ON FUNDING SOURCES.

CONTINUED EXPANSION OF THE USES OF 470 FUND MONEYS WILL RESULT IN THE \$50 MILLION CAP NEVER BEING REACHED, WHICH WILL IN TURN MEAN A CONTINUING TAX INCREASE ON THE OIL INDUSTRY.

WITH ALASKA OIL PRODUCTION DECLINING, COUPLED WITH THE CURRENT SOFT OIL MARKET, NOW IS NOT THE TIME FOR ALASKA TO PASS ANOTHER TAX INCREASE ON THE OIL INDUSTRY. AS WE HAVE PREVIOUSLY TESTIFIED, TAX STABILITY IS CRUCIAL TO THE FUTURE OF THE OIL INDUSTRY IN ALASKA.

IN THE CASE OF THE UNDERGROUND STORAGE TANKS, THERE ARE MORE APPROPRIATE FUNDING SOURCES, SUCH AS GENERAL FUND REVENUES OR THE MOTOR FUEL TAX. ATTACHED TO MY TESTIMONY IS A PAPER PREPARED BY THE AMERICAN PETROLEUM INSTITUTE WHICH ADDRESSES ALTERNATE REVENUE SOURCES FOR UNDERGROUND STORAGE TANKS CLEANUP TRUST FUNDS.



BP EXPLORATION

David Pritchard
Senior Vice President
Prudhoe Bay Unit
Alaska

BP Exploration (Alaska) Inc.
500 East Benson Boulevard
P. O. Box 196612
Anchorage, Alaska 99519-6612
(907) 564-4029

March 6, 1992

The Hon. Jalmar Kerttula, Co-Chair
The Hon. Pat Pourchot, Co-Chair
Senate Finance Committee
P. O. Box V
Juneau, AK 99811

New Uses of the Oil Spill Response Fund (AS 46.08.010)

Dear Senator Kerttula and Senator Pourchot:

As Senior Vice President of BP Exploration (Alaska) Inc. with responsibility for the Prudhoe Bay field, I am writing to express BP's concern about the new proposals under consideration to expand the uses of the oil spill response fund (the "470 fund") under AS 46.08.010.

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When the conservation surcharge was enacted as part of a package of oil spill legislation in 1989, the fiscal notes for that legislation indicated that the revenues from the surcharge through FY 92 would be enough to cover the additional demands on the 470 fund for over 25 years. However, since 1989 several new uses have been created for the 470 fund. These new uses have delayed the time when the surcharge goes into suspension and will shorten the time it will be suspended before being needed to replenish the fund. To date more than \$60 million has been paid under the surcharge.

If enacted, the new uses being proposed for the 470 fund would ensure that the conservation surcharge will continue indefinitely. Rather than begin a limited duration surcharge to raise \$50 million to be readily available for the State to respond to a spill, the conservation surcharge begins to look like a permanent tax increase aimed at the exploration and production industry.

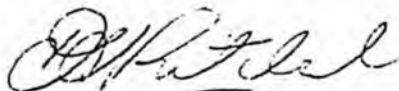
The Hon. Jalmar Kerttula, Co-Chair
The Hon. Pat Pourchot, Co-Chair
Page 2

We are striving to reduce costs as much as we can at Prudhoe Bay and the other North Slope fields, consistent with safe and prudent operations. The ongoing decline in production means we cannot afford to let costs rise, nor even let them remain flat. Only by actively reducing our costs of operating will we be able to develop and recover the full potential of the resources on the Slope. Making the oil conservation surcharge a permanent tax increase runs counter to the need to reduce costs. And although it may seem modest, it will probably be viewed inside and outside the oil industry as a sign of instability in Alaska's tax structure.

We are not questioning the need to clean up leaking underground storage tanks, nor are we doubting the merits of the other uses that have been proposed for the 470 fund. The worthiness of these environmental initiatives is not the issue. The issue is whether Alaska needs to raise oil taxes in order to address these initiatives. We at BP believe it is neither necessary nor prudent to raise oil taxes at this time.

Very truly yours,

BP EXPLORATION (ALASKA) INC.



David J. Pritchard
Senior Vice President

cc: Finance Committee Members

DEPT. OF ENVIRONMENTAL CONSERVATION

"470" FUND BUDGET OVERVIEW

Senate Finance Subcommittee
March 6, 1992

- I FY 92/FY 93 "470" REVENUES AND ALLOCATIONS
- II RESPONSE DEPOTS AND CORPS
- III AMHS , OIL SPILL RESPONSE FERRY
- IV. SPPM, SERC, UST ASSISTANCE PROGRAM
- V. CONTAMINATED SITES

FY 92 "470" FUND ALLOCATIONS

MEMORANDUM

State of Alaska

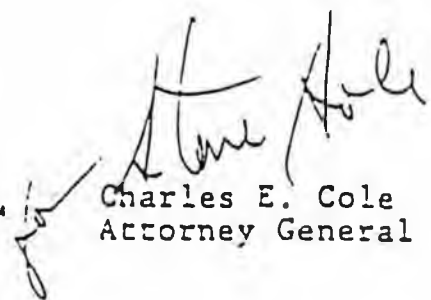
Department of Law

TO Shelby Stastny
Director
Office of Management and Budget

DATE January 21, 1992

TEL. NO. 465-3600

SUBJECT EXXON VALDEZ Litigation
Costs Payment

FROM 
Charles E. Cole
Attorney General

On December 17, 1991, the State of Alaska received a payment of \$29,267,841.58 (\$29,000,000 in principal and \$267,841.58 in interest incurred between October 3, 1991, and December 13, 1991) from the Exxon Corporation. This payment was received pursuant to Paragraph 10 of the EXXON VALDEZ oil spill settlement agreement and Section VI(B) of the Memorandum of Understanding between the governments. The payment represents a partial payment of the principal amount of \$38,180,000.00 due to the state for damage assessment costs, attorneys fees, experts' fees, and other costs, collectively known as "litigation and assessment costs," incurred by the state on or before March 12, 1991. Future payments will be made in accordance with the schedule of payments of the settlement agreement. The balance of unpaid litigation and settlement costs (incurred on or before March 12, 1991) yet to be reimbursed to the state is now \$8,912,159.00.

According to the attached schedule, prepared by the state's oil spill cost accounting firm Peterson and Company, the principal amount due the state for litigation and assessment costs prior to March 12, 1991, is \$38,180,000.00. Of this amount, \$33,020,000.00, or 86.49 percent of the total amount, is for unreimbursed costs from the state's general fund, and \$5,160,000.00, or 13.51 percent of the total amount, is for unreimbursed costs from the state's oil and hazardous substance response fund. Accordingly, 86.49 percent of the current payment, or \$25,313,756.18, should be deposited in the general fund as unrestricted receipts, and 13.51 percent of payment, or \$3,954,085.40, should be returned to the oil and hazardous substance response fund as restricted receipts.

- cc: Max Hodel, Chief of Staff
- Darrel J. Rexwinkel, Commissioner,
Dept. of Revenue
- John A. Sandor, Commissioner,
Dept. of Environmental Conservation
- Don Wanie, Director, Div. of Finance
- Craig Tillery, Assistant Attorney General

Attachment

B

STATE OF ALASKA
 EXXON VALDEZ OIL SPILL
 ESTIMATED UNREIMBURSED DAMAGE ASSESSMENT AND LITIGATION COSTS
 BY FUNDING SOURCE
 THROUGH MARCH 12, 1991

	<u>ESTIMATED RECORDED COSTS</u>	<u>ESTIMATED OVERHEAD AND FINANCING COSTS (1)</u>	<u>ESTIMATED TOTAL</u>	<u>LESS REIMBURSEMENTS</u>	<u>ESTIMATED UNREIMBURSED COSTS</u>
DAMAGE ASSESSMENT					
470 Funding	4.93	0.00	4.93	0.00	4.93
Other Funding	<u>16.82</u>	<u>4.57(1)</u>	<u>21.39</u>	<u>5.74(2)</u>	<u>15.65</u>
TOTAL	<u>21.75</u>	<u>4.57</u>	<u>26.32</u>	<u>5.74</u>	<u>20.58</u>
LITIGATION					
470 Funding	0.23	0.00	0.23	0.00	0.23
Other Funding	<u>17.37</u>	<u>0.00</u>	<u>17.37</u>	<u>0.00</u>	<u>17.37</u>
TOTAL	<u>17.60</u>	<u>0.00</u>	<u>17.60</u>	<u>0.00</u>	<u>17.60</u>
TOTAL ESTIMATED UNREIMBURSED DAMAGE ASSESSMENT AND LITIGATION COSTS					
470 Funding					5.16
Other Funding					<u>33.02</u>
TOTAL					<u>\$38.18</u>

NOTES:

- (1) Overhead and financing costs were allocated in total to other funding. These amounts are not recorded on the state accounting system (AKSAS).
- (2) CERCLA Reimbursements
- (3) Costs from March 1-12, 1991, were estimated based upon 12/31 of total March costs.

STATE OF ALASKA

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

WALTER J. HICKEL, GOVERNOR

P.O. BOX 5
JUNEAU, ALASKA 99811-0400
PHONE: (907) 465-2300
TELEFAX: (907) 465-2389

January 7, 1992

JAN 13 1992

The Honorable Cliff Davidson

The Honorable Kay Brown

Alaska House of Representatives

P.O. Box V

Juneau, AK 99811

Dear Representatives Davidson and Brown:

The primary continuing source of revenue for the Oil and Hazardous Substance Response Release Fund or "470 Fund," comes from the Conservation Surcharge on Oil Production (AS 43.55.200). This \$.05/bbl charge is levied on all oil production in the State exclusive of State and federal royalty production.

The surcharge is in effect as long as the balance in the "470 Fund" is below \$50 million. At current rates of production the nickel per barrel assessment can generate roughly \$25 million per year. The forecast prepared for this revenue source assumes that the revenues will be spent as they come in so that the fund never reaches its \$50 million cap.

Projected revenues from 43.55.200 are contained in the following table taken from the Department of Revenue Fall 1991 Revenue Sources Book.

Projected Revenues from the Oil Conservation Surcharge (Million \$)

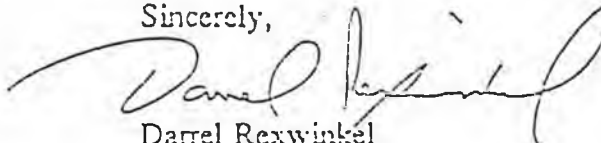
<u>Fiscal</u> <u>Year</u>	<u>Low</u>	<u>Mid</u>	<u>High</u>
1992	28.3	28.3	28.3
1993	26.7	26.7	26.7
1994	26.5	26.5	26.5
1995	25.7	26.0	26.0
1996	24.6	24.8	25.4
1997	22.5	22.7	23.6
1998	20.6	20.6	22.0
1999	18.0	18.1	20.6
2000	15.9	16.1	18.6
2001	14.1	14.3	16.7
2002	12.7	13.1	15.7
2003	11.3	11.7	14.4
2004	10.2	10.5	16.2
2005	9.1	9.4	16.0

The Honorable Cliff Davidson
The Honorable Kay Brown
January 7, 1991
Page 2

The difference in the above scenarios is directly related to the higher rates of production assumed for the higher price scenarios. Our production forecast is specifically designed to be sensitive to oil prices. The forecast model uses a standard capital investment decision method which compares the costs of producing an oil field with the revenues. Costs, which are determined by the amount of production that is obtained for a given level of investment, are compared to the value of that production. The logic is simply that the higher the oil prices are, the more attractive investments in marginal projects become. (Marginal projects are those investments which result in few barrels for every dollar expended.) For instance, under the low price scenario which assumes oil prices never get above an inflation adjusted \$15/bbl, West Sak cannot be produced at a profit.

If you have further questions about these matters please call me or Chuck Logsdon (277-5627, ext. 265).

Sincerely,



Darrel Rexwinkel
Acting Commissioner

DR/CL/mem
92-002

cc: Paul Fuhs, Legislative Liaison
Office of the Governor
Chuck Logsdon, Oil & Gas Audit Division
Department of Revenue

FY92 DEC 470 FUND

<u>ALLOCATION</u>	<u>TOTAL</u>	<u>OBLIGATED</u>	<u>EXPENDED</u>
State and Regional Contingency Planning	395.9		
RSA to DEC, Central Office, SPPM, Operating Costs		311.1	47.3
RSA to DEC, SPAR, Director's Office, Operating Costs		11.8	0.0 See Note 1
RSA to Fish and Game, State and Regional Contingency Plan Development		70.0	11.9
Spill Response, Containment, Safety, Cleanup and Cost Recovery	3,934.3		
RSA to DEC, SPPM, Operating Costs		1,310.0	435.6
RSA to DEC, SERO, Operating Costs		169.0	89.3
RSA to DEC, SCRO, Operating Costs		1,069.6	582.4
RSA to DEC, NRO, Operating Costs		646.0	431.1
RSA to DEC, PCRO, Operating Costs		359.0	311.3
RSA to DEC, SPAR, Director's Office, Operating Costs		88.1	0.0 See Note 1
RSA to DEC, Administrative Services, Operating Costs		32.3	0.0 See Note 2
RSA to Fish and Game - Industry C-Plan Review		147.7	0.0 See Note 3
RSA to Natural Resources - Industry C-Plan Review		23.9	0.0 See Note 4
RSA to Law - Cost Recovery		250.0	0.0 See Note 5
RSA to Law - Regulation Review		7.9	0.0 See Note 6
State Emergency Response Commission	299.9		
RSA to DEC, SPPM, Operating Costs		291.1	130.9
RSA to DEC, SPAR, Director's Office, Operating Costs		8.8	0.0 See Note 1
Local Emergency Planning Committees	600.0		
Response Office, Depots & Corps	2,911.4		
RSA to DEC, Spill Response Office, Operating Costs		840.9	355.3
RSA to DEC, SPAR, Director's Office, Operating Costs		35.2	0.0 See Note 1
RSA to Military and Veteran's Affairs, DES, Response Depots & Volunteer Corps Hazards Analysis		1,700.0	236.1
		300.0	0.0
Hazardous Substance Spill Technology Review Council	296.1		
RSA to DEC, SRO, Operating Costs		196.1	55.0
RSA to DEC, SPAR, Director's Office, Operating Costs		5.0	0.0 See Note 1
Contaminated Site Investigation, Safety, Cleanup and Cost Recovery	3,655.0		
RSA to DEC, Contaminated Sites, Operating Costs		470.9	82.7
RSA to DEC, SERO, Operating Costs		85.4	10.0
RSA to DEC, SCRO, Operating Costs		155.9	66.6
RSA to DEC, NRO, Operating Costs		87.8	98.1 See Note 7

ALLOCATIONTOTALOBLIGATEDEXPENDEDContaminated Site Investigation, Safety, Cleanup and
Cost Recovery (continued)

RSA to DEC, PCRO, Operating Costs		0.0	16.6 See Note 8
RSA to Law, Cost Recovery		60.0	0.0 See Note 5
12510 Brandon Street, Anchorage, Hydrocarbon Investigation		1.4	0.0
Marshall Groundwater, Contaminated Water Supply		25.0	2.6
Forward Pad, Deadhorse, Oil Spill Contamination		150.0	0.0
Tellin Soil Excavation, NRO, Site Assessment, Diesel Fuel		143.0	73.2
Koodlak Small Boat Harbor, Oil Leak		11.2	1.8
Sitka Air Monitoring, Sulfur Dioxide and Particulate Emissions		70.7	21.0
Peter's Creek Phase II, Groundwater Contamination		53.0	4.8
Bath & Spruce, Investigation, Lead/Other Metals Contamination, Junkyard		25.4	19.7
Volatile Organic Chemical Survey, Public Water Supply Contamination		10.0	2.2
Child's Pad, Waste Material Contamination, State Owned Property		60.0	0.0
Fairbanks Municipal Utility System Oil Site Investigation			
City Drinking Water Contamination		29.2	7.9
Tweed Excavation, Subsurface Investigation, Eagle River, Home Heating Fuel		4.9	1.0
Engine & Gear, Investigation Oil/Hazardous Substance Contamination		5.9	2.4
Wade North Caribou Island, Improper Storage of Oil/Hazardous Substance		.4	0.0

Kona Cleanup Project

807.0

RSA to DEC, SCRO, Operating Costs	317.0	163.6
RSA to DEC, SPAR, Director's Office, Operating Costs	11.8	0.0 See Note 1
RSA to Law, Cost Recovery	40.0	0.0 See Note 5
Minilchik Department of Transportation Drum, Testing, Removal, Disposal	.7	0.0
Johnson Site #1, Testing Burn Piles for Metals and PCBs	16.0	0.0
Coastal Drilling, Elevated Concentration of Contaminants	155.0	24.8
Lamplight Chevron, Closed Underground Tank Contamination	6.0	1.4
Rabbit Run Drum Site, Removal and Disposal of Drums	5.0	0.0

Exxon Valdez Cleanup

4,126.0

RSA to DEC, Administrative Services, Operating Costs	79.3	0.0 See Note 2
RSA to Department of Transportation and Public Facilities, Laboratory	24.0	2.8
RSA to Natural Resources	376.2	125.7
RSA to Military & Veteran's Affairs	5.1	0.0
RSA to Fish and Game	563.2	249.6
RSA to Telecommunications	53.5	66.0 See Note 9
ADEC Expenditures	3,024.7	1,053.0

Exxon Valdez Assessment and Restoration

12,474.4

RSA to Fish and Game, Restoration	12,147.3	4,325.4
RSA to University of Alaska, Sediment Analysis	10.0	0.0 See Note 10
RSA to University of Alaska, Microbiology	86.3	0.0 See Note 10
ADEC Expenditures	230.8	159.6

<u>ALLOCATION</u>	<u>TOTAL</u>	<u>OBLIGATED</u>	<u>EXPENDED</u>
Exxon Valdez Litigation, RSA to Law	3,653.1	3,653.1	529.4
Arctic Marine Resources Commission	100.0	100.0	50.0
Spill Reserve	12,627.4		
Soldotna Chlorine Gas, Sewage Treatment Plant		10.0	0.0
Kodiak Larvikto Spill, Storage Tank and Fuel Line Damage		7.0	4.8
Chevron Kenai Oil Spill, Cook Inlet Spill		25.0	1.5
208 Wondell Street, Fairbanks, Oil Spill		4.0	0.0
East Sourd, Oil Spill, Unalaska		5.7	5.7
Benny Benson Lagoon, Underground Storage Tank Oil Spill, Seward		25.0	21.2
Prince William Sound Regional Citizens' Advisory Council Ballast Water Treatment Contract	175.0	175.0	0.0
Non Crude Tanker Study	30.0	30.0	20.0
<u>OTHER AGENCIES</u>			
Citizen's Oversight Council on Oil and Other Hazardous Substances	237.3	237.3	204.9
Ferries with Oil Spill Response Capabilities (SB165)	500.0	500.0	4.1

Note 1: SPAR Director's Office has expended 11.2 which has yet to be distributed to the RSAs.

Note 2: Administrative Services has not expended or recorded any Response Fund eligible costs to date.

Note 3: RSA is in process awaiting approval of Revised Program 18920106.

Note 4: RSA is in process awaiting approval of Revised Program 18920106.

Note 5: Law has expended 210.0 which has not been distributed amongst the three allocations funding cost recovery efforts.

Note 6: RSA is in process.

Note 7: Adjustments will be processed to correct apparent over expenditures.

Note 8: Adjustments will be processed to correct apparent over expenditures.

Note 9: Adjustments will be processed to correct apparent over expenditures.

Note 10: Unable to determine University of Alaska actual expenditures.

FY 92 CONTAMINATED SITES IN PROCESS
(In Thousands)

<u>Site, Incident</u>	<u>Budget</u>
12510 Brandon Street, Anchorage, Hydrocarbon Investigation	1.4
Marshall Groundwater, Contaminated Water Supply	25.0
Forward Pad, Deadhorse, Oil Spill Contamination	150.0
Tetlin Soil Excavation, NRO, Site Assessment, Diesel Fuel	143.0
Kodiak Small Boat Harbor, Oil Leak	11.2
Sitka Air Monitoring, Sulfur Dioxide and Particulate Emissions	70.7
Peter's Creek Phase II, Groundwater Contamination	53.0
84th & Spruce, Investigation, Lead/Other Metals Contamination, Junkyard	25.4
Volatile Organic Chemical Survey, Public Water Supply Contamination	10.0
Child's Pad, Waste Material Contamination, State Owned Property	60.0
Fairbanks Municipal Utility System Off Site Investigation City Drinking Water Contamination	29.2
Tweed Excavation, Subsurface Investigation, Eagle River, Home Heating Fuel	4.9
Engine & Gear, Improper Storage of Oil/Hazardous Substance, Skilak Lake	5.9
Wade North Caribou Island	.4

FY 92 SPILL RESERVE PROJECTS
(In Thousands)

Site. Incident

Budget

Soldotna Chlorine Gas, Sewage Treatment Plant	10.0
Kodiak Landslide Spill, Storage Tank and Fuel Line Damage	7.0
Chevron Kenai Oil Spill, Cook Inlet Spill	25.0
208 Wendell Street, Fairbanks, Oil Spill	4.0
East Sound, Oil Spill, Unalaska	5.7
Benny Benson Lagoon, Underground Storage Tank Oil Spill, Seward	25.0

FY 93 "470" FUND REVENUE/ALLOCATIONS

FY 93 RESPONSE FUND REVENUE PROJECTION
(IN THOUSANDS)

Unobligated Balance of FY92 Spill Reserve Allocation	12,400.0
Response Fund Balance Not Previously Allocated	5,093.4
Unappropriated Balance of the Mitigation Account	4,262.8
Available Monies from .05/bbl Surcharge	28,300.0
Exxon Valdez Litigation Cost Recovery	3,954.1
Exxon Valdez Receipts*	15,350.0
Total	69,360.3

FY 93 PROPOSED RESPONSE FUND ALLOCATIONS

State and Regional Contingency Planning <i>(includes 33.9 DNR + 122.3 FAG)</i>	688.2
Spill, Prevention, Response, Planning, Safety, Cleanup and Cost Recovery	4,877.8
State Emergency Response Commission	538.1
Local Emergency Planning Committees	1,200.0
Spill Response Office, Depots and Corps	6,460.5
Hazardous Substance Spill Technology Review Council	711.9
<u>Site Investigation, Safety, Cleanup and Cost Recovery</u>	<u>4,655.0</u>
Kenai Cleanup Project	717.2
Exxon Valdez Cleanup*	350.0
Exxon Valdez Litigation	2,958.0
Exxon Valdez Restoration* - <i>to be reimbursed by the Tim 1200</i>	15,000.0
Citizen's Oversight Council on Oil & Other Hazardous Substances	237.3
Total	38,404.0
Spill Reserve	30,956.3

*These funds would only be spent on cost recoverable activities. This allocation is intended to serve as the authority for these activities.

DEC FY 92 & 93 RESPONSE FUND ALLOCATIONS
(IN THOUSANDS)

Not final -
now being
revised.

<u>ALLOCATION</u>	<u>FY 92</u>	<u>FY 93</u>
State and Regional Contingency Planning	395.9	688.2
Spill Prevention, Response, Planning, Safety, Cleanup, Cost Recovery	3,934.3	4,817.8
State Emergency Response Commission	299.9	655.5
Local Emergency Planning Committees	600.0	1,200.0
DEC Spill Response Office	911.4	1,460.5
Dept. of Military Affairs Depots and Corps	2,000.0	5,000.0
Hazardous Substance Spill Technology Review Council	296.1	711.9
Site Investigation, Safety, Cleanup, and Cost Recovery	3,655.0	4,655.0
Kenal Cleanup Project	807.0	717.2
Exxon Valdez Oil Spill Cleanup	4,126.0	350.0
Exxon Valdez Assessment & Restoration	12,474.4	13,332.3
Exxon Valdez Litigation	3,653.1	3,653.0
Arctic Marine Resources Commission	100.0	0.0
Citizen's Oversight Council	237.3	237.3
Prince William Sound RCAC	<u>175.0</u>	<u>0.0</u>
SUB TOTAL	33,665.4	37,478.7
Spill Reserve	25,831.1	40,000.0
RESPONSE FUND TOTAL	59,496.2	77,478.7

OIL AND HAZARDOUS SUBSTANCE RELEASE RESPONSE FUND
 DEC FY 93 OPERATING & NON-OPERATING ALLOCATIONS REQUEST
 (IN THOUSANDS)

	<u>Operating</u>	<u>Non Operating</u>	<u>Total</u>
State & Regional Contingency Planning			
DEC Central Office	281.5	250.0	531.5
DFG	0.0	122.8	122.8
DNR	0.0	33.9	<u>33.9</u>
		Total	688.2
Spill Prevention, Response, Planning, Safety, Cleanup, Cost Recovery			
DEC Central Office	1,450.7	0.0	1,450.7
DEC Regional Offices	2,892.1	0.0	2,892.1
DFG	0.0	127.2	127.2
DNR	0.0	97.8	97.8
Dept. of Law (cost recovery)	0.0	250.0	<u>250.0</u>
		Total	4,817.8
State Emergency Response Commission (SERC)			
SERC Staff (DEC)	218.1	250.0	468.1
SERC Contractual	35.6	0.0	35.6
Public Member Travel	60.0	0.0	60.0
DNR	0.0	16.1	16.1
DFG	0.0	5.1	5.1
DHSS	0.0	55.5	55.5
DCRA	0.0	10.0	10.0
Dept. of Labor	0.0	4.0	<u>4.0</u>
		Total	655.4
Local Emergency Planning Committees (LEPC)			
	0.0	1,200.0	1,200.0
DEC Spill Response Offices			
	1,450.5	0.0	1,450.5
Dept. of Military Affairs Depots & Corps			
	0.0	5,000.0	5,000.0
Hazardous Substance Spill Technology Review Council			
	211.9	500.0	711.9
Site Investigation, Safety, Cleanup and Cost Recovery			
DEC	1,525.1	3,028.9	4,555.0
Dept. of Law (cost recovery)	0.0	100.0	<u>100.0</u>
		Total	4,655.0
Kenal Cleanup Special Project			
DEC	227.1	450.1	677.2
Dept. of Law (cost recovery)	0.0	40.0	<u>40.0</u>
		Total	717.2
State Spill Prevention and Response Programs Subtotal			
	8,964.6	10,941.4	19,906.0

FY 93 OHSR RESPONSE FUND REQUESTS

<u>Agency</u>	<u>Purpose</u>	<u>Amount</u>
Military & Veterans Affairs	Regional Depots & Equipment	\$ 5,000,000
Law	Exxon Valdez Settlement/litigation	\$ 3,653,100
Fish & Game	Industry, State, & Regional Contingency Plan Reviews	\$ 258,000
Natural Resources	State Contaminated Sites assessment and cleanup	\$ 29,102
Natural Resources	Industry, State, & Regional Contingency Plan Reviews	\$ 24,068
Natural Resources	Administrative Overhead for Contaminated Sites & Contingency Plan Review	\$ 33,734
Natural Resources	Exxon Valdez Archaeological data	\$ 11,800
Health & Social Services	SERC Committee Participation, Emergency Response Training & Equipment	\$ 161,500
Community & Regional Affairs	SERC Committee Participation	\$ 11,000
Labor	SERC Meetings	\$ 4,000
	TOTAL	\$9,9196,304

October 25, 1991

Post-It™ brand fax transmittal memo 7671		# of pages ▶ 3
To: David Gentry	From: SLOCUM	
Co: DNR	Co: DEC	
	Phone #: 5010	
Fax #: 2090	Fax #: 5087	

STATE OF ALASKA

Department of Environmental Conservation

TO: John A. Sandor
Commissioner

DATE: October 25, 1991

RECEIVED
ADMINISTRATIVE SERVICES
OCT 2 1991

FILE NO: Mike\memo.krt

TELEPHONE NO: (907) 465-2600

SUBJECT: FY 93 OHSRRF Requests

FROM: *Michael A. Conway*
Michael A. Conway
Director
Spill Prevention and Response Division

Attached is a list of requests received from State agencies to access the Oil and Hazardous Substance Release Response Fund (OHSRRF) in FY 93. Copies of the actual requests are enclosed for your review. With the exception of the Department of Law, all the funding requests were received by the October 1 deadline.

Our initial comments on the requests are summarized below for your consideration.

DNR Request

We may receive additional requests from DNR for the Contingency Plan Reviews because only the Division of Land has asked for funding. The Division of Oil and Gas has the DNR lead for this activity. I am checking on this and will request a DNR wide request which consolidates all C-Plan activities.

Workplan Detail

Contrary to our instructions for a detailed work plan and budget proposal, most agencies submitted general proposals without sufficient detail on specific tasks and budgets. Staff have been assigned to contact each of the requesting agencies to discuss additional information needs and request detailed work plans.

Overhead Costs

Some agencies have included administrative overhead costs in their Response Fund requests. As a matter of policy, we do not believe Response Funds should be used to fund administrative overhead costs.

Response Equipment and Training

Some agencies have requested Response Funds to purchase oil and hazardous substance release response equipment and training. With the exception of the Department of Military Affairs, it is premature to allocate Response Funds to individual