

ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672

7925 HOUSE LABOR & COMMERCE

190

HB

39

# HOUSE LABOR AND COMMERCE COMMITTEE

ALASKA STATE LEGISLATURE

STATE CAPITOL, JUNEAU, AK 99801-1182  
(907) 465-4954



## HOUSE BILL 39

1. SSB 39, An Act relating to prevention, abatement, and control of air pollution; and providing for an effective date.
2. Fiscal Notes
3. Sponsor Statement  
Letter from United States Environmental Protection Agency
4. Sectional Analysis
5. 1990 Amendments to the Clean Air Act and their Impacts on Alaska
6. Correspondence from the Air Quality Legislative Working Committee

# FISCAL NOTE

For Information Purposes Only (Note 1)

**STATE OF ALASKA  
1993 LEGISLATIVE SESSION**

BILL NO. SS HB - 39

Revision Date: 9-Feb-93  
 Title: Alaska Air Permit Statutes  
 Sponsor: Representative Kay Brown  
 Requestor: House Labor and Commerce Committee

Department Affected: Environmental Conservation  
 BRU: Environmental Quality  
 Component: Air Quality Management

COMPONENT SERIAL NO. 1428

**EXPENDITURES/REVENUES:**

(Thousands of Dollars)

OPERATING	FY 94(Note 1)	FY 95(Note 2)	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	0.0	3,125.2	3,125.2	3,125.2	3,083.1	3,083.1
TRAVEL	0.0	284.6	287.9	291.2	334.2	334.2
CONTRACTUAL	0.0	106.8	495.1	726.5	259.6	259.6
SUPPLIES	0.0	75.7	75.4	77.2	65.8	65.8
EQUIPMENT	0.0	156.8	0.0	0.0	0.0	0.0
LAND&STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS,CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>3747.1</b>	<b>3983.6</b>	<b>4220.1</b>	<b>3742.7</b>	<b>3742.7</b>

CAPITAL						
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REVENUE						
FUND SOURCE: 1005	0.0	3747.1	3983.6	4220.1	3742.6	3742.6

**FUNDING:**

1002 FEDERAL RECEIPTS						
1003 GF MATCH						
1004 GF						
1005 GF/PROGRAM RECPT	0.0	3747.1	3983.6	4220.1	3742.7	3742.7
1006 GF/MHTIA						
OTHER						
<b>TOTAL</b>	<b>0.0</b>	<b>3747.1</b>	<b>3983.6</b>	<b>4220.1</b>	<b>3742.7</b>	<b>3742.7</b>

**POSITIONS:**

FULL-TIME	(Note 3)	0.0	22.4	22.4	22.4	21.7	21.7
PART-TIME							
TEMPORARY							

Estimate of current year (FY93) impact: \$ 0

ANALYSIS: (See attachment)

- Note 1: FY 94 permit program to have no funding changes relative to FY 93, as permits will not begin to be issued until 1995.  
 Note 2: For FY 95 and beyond, federal law requires the permit program be 100% funded by program receipts.  
 Note 3: Indicates net increase in positions relative to FY 93.

Prepared by: Leonard D. Verrelli, Chief  
 Division: Environmental Quality, Air Quality Management

Phone: 465-5100  
 Date: 2/9/93

Approved by Commissioner: Janice Adair, Assistant Commissioner  
 Agency: Department of Environmental Conservation

Date: 2/10/93

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

**1993 AIR PERMIT BILL FISCAL NOTE  
SUPPLEMENTARY EXPLANATION**

Title V of the 1990 Clean Air Act (the Act) requires each state to develop and implement a permit program under the approval and direction of the U.S. Environmental Protection Agency. **Though Alaska currently maintains an air quality permit program, the mandates imposed by the Act are expected to result in a substantially increased workload for ADEC.** The Act also mandated that each state collect fees from permittees necessary to fund the total direct and indirect costs of the permit program.

ADEC performed a comprehensive analysis during the fall of 1992 for the purpose of estimating the staff and budget increases over FY 93 due to implementing an approvable Title V permit program. The findings of this analysis are presented in a document entitled "Proposed Permit Program - Estimated Budget and Staffing," a copy of which is available from the Air Quality Management Section at ADEC. This analysis also provides estimates of fees which will be charged to permittees for the purpose of funding an approvable program. The enclosed spreadsheets on page 4 and 5 reflect the findings of this analysis and document the assumptions used to calculate the entries in the Air Permit Bill's Fiscal Note.

**ADEC expects that the number of permitted facilities will increase from the current of 175 to 450.** The Act requires that each state permit all facilities within three years of starting a permit program. ADEC plans to distribute the permitting workload equally over the first three years, so that a stable number of permitting engineers are required. In the fourth year of the permit program, the permitting workload will decrease since all existing facilities should be permitted. The inspection workload will increase as more facilities are permitted, and is expected to stabilize in year four when all facilities are permitted. ADEC plans to reassign staff, who no longer will be needed in permitting, to inspection duties. In addition, ADEC plans to contract some inspection work to private consultants. These measures are intended to avoid hiring personnel on a temporary basis; therefore stabilizing the number of personnel employed in the permit program.

The line item entries in the Operating block of the Fiscal Note reflect the total costs of the Title V air permit program for FY 95 and beyond. The budget line item allocations for ADEC's FY 93 permit program are listed at the top of page 4. **ADEC's current permit program employs 21.5 FTE (full-time equivalents) at a total cost of \$1.922 million in FY 93.** The existing program is funded by federal grant, state matching monies and program receipts. **New federal law requires that the permit program be 100 % funded by program receipts managed in a dedicated fund.** Following federal approval of the new program, current federal grant and state matching monies will not be used to support the permit program portion of the entire budget for the air quality management section.

Since the permit program established pursuant to this bill is not expected to be implemented until FY 95, no new costs are to be incurred in FY 94. In FY 95, an additional 22.4 FTE over the FY 93 will be required for implementation of the permit program. The majority of the staff will be involved with permit issuance tasks. This is the only year ADEC expects to hire employees for this permit program.

The following comments apply to the operating line items for FY 95 to FY 99.

- a. Travel costs are estimated from historical records and projections based upon the number of permittees who will be subject to the permit program. Travel cost increase from FY 95 to 98, since both the number of permittees and the number of required inspections increase as ADEC issues permits to facilities which are not currently permitted. Travel costs stabilize in FY 98 when the program enters the continuation phase.
- b. Contractual costs increase from FY 95 to FY 97 because ADEC plans to secure contracts with consultants to perform some of the required facility inspections. Contracting this excess inspection workload will avoid the need to hire state employees on a temporary basis. Inspection contracting may cease in FY 98 when the number of employees involved in permitting will decline and these employees will be shifted to the inspection group.
- c. Supply costs increase from FY 95 to FY 97 due to the increase in costs associated with permitting such as public hearings and advertisement, and supplies needed for the increased number of facilities to be inspected. The costs stabilize in FY 98 as the program enters the continuation phase.
- d. Equipment costs are incurred in FY 95 when ADEC employs the additional staff needed to implement the permit program. Costs are necessary to purchase employee workstations and are figured at \$7000 per employee. No employees are expected to be hired in other fiscal years.

1993 AIR BILL FISCAL NOTE BACK-UP

FY 93 TOTAL PERMIT PROGRAM COSTS

Pers. Services	Travel	Contractual	Supplies	Equipment	FTE
1390.4	130.9	294.3	49.5	57.2	21.5

FY 93 TOTAL 1922.3

FY 95 TOTAL PERMIT PROGRAM COSTS

Group	Pers. Services	Travel	Contractual	Supplies	Equipment	FTE
Per Ton Services	917.0	89.7	31.0	21.3	N/A	12.7
Permits	1558.5	50.0	54.2	29.0	N/A	22.3
Compliance	536.1	124.8	18.2	9.8	N/A	7.5
Monitoring	113.5	20.1	3.4	13.6	N/A	1.4
Totals	3125.2	284.6	106.8	73.7	156.8	43.9

FY 95 TOTAL 3747.1

FY 96 TOTAL PERMIT PROGRAM COSTS

Group	Pers. Services	Travel	Contractual	Supplies	Equipment	FTE
Per Ton Services	917.0	89.7	76.5	21.3	0.0	12.7
Permits	1558.5	50.0	133.9	29.0	0.0	22.3
Compliance	536.1	124.8	276.4	9.8	0.0	7.5
Monitoring	113.5	23.4	8.4	15.3	0.0	1.4
Totals	3125.2	287.9	495.1	75.4	0.0	43.9

FY 96 TOTAL 3983.6

1993 AIR BILL FISCAL NOTE BACK-UP

FY 97 TOTAL PERMIT PROGRAM COSTS

Group	Pers. Services	Travel	Contractual	Supplies	Equipment	FTE
Per Ton Services	917.0	89.7	76.5	21.3	0.0	12.7
Permits	1558.5	50.0	133.9	29.0	0.0	22.3
Compliance	536.1	124.8	507.8	9.8	0.0	7.5
Monitoring	113.5	26.7	8.4	17.1	0.0	1.4
Totals	3125.2	291.2	726.5	77.2	0.0	43.9

FY 97 TOTAL 4220.1

FY 98 TOTAL PERMIT PROGRAM COSTS

Group	Pers. Services	Travel	Contractual	Supplies	Equipment	FTE
Per Ton Services	917.0	89.7	76.5	21.3	0.0	12.7
Permits	931.1	35.0	78.6	13.2	0.0	13.1
Compliance	1121.5	179.5	96.1	12.5	0.0	16.0
Monitoring	113.5	30.0	8.4	18.8	0.0	1.4
Totals	3083.1	334.2	259.6	65.8	0.0	43.2

FY 98 TOTAL 3742.6

FY 99 TOTAL PERMIT PROGRAM COSTS

Group	Pers. Services	Travel	Contractual	Supplies	Equipment	FTE
Per Ton Services	917.0	89.7	76.5	21.3	0.0	12.7
Permits	931.1	35.0	78.6	13.2	0.0	13.1
Compliance	1121.5	179.5	96.1	12.5	0.0	16.0
Monitoring	113.5	30.0	8.4	18.8	0.0	1.4
Totals	3083.1	334.2	259.6	65.8	0.0	43.2

FY 99 TOTAL 3742.6

Position Title Environmental Engineering Associate			No. of Positions 11	Range / Step 18A	Barg. Unit GC
Time Status Full Time	Staff Months 132		Location Various	Election District Various	
<b>TYPE OF EXPENDITURE</b>			<b>Amount</b>		
Salary			\$461.9		
Benefits			\$181.2		
Premium Pay			\$0.0		
Other	19% Administrative		\$122.2		
Total Personal Services			\$765.3		
Travel	\$ 4,150 / FTE		\$45.8		
Contractual *	\$ 6,000 / FTE		(\$16.0)		
Commodities	\$ 1,500 / FTE		\$16.5		
Equipment	\$ 7,000 / FTE		\$77.0		
Other					
Total Cost			\$888.6		
<b>FUNDING SOURCE FOR TOTAL COST</b>					
Federal Receipts	1002				
G.F. Match	1003				
General Fund	1004				
I-A Receipts	1007				
CIP Receipts	1061				
Other	Program Receipts		\$888.6		
* EPA IPA position shifted from contractual to salary line item					
			<b>Justification:</b> The new Clean Air Act of 1990 requires all states to establish a completely new operating permit program which takes into account small sources never permitted before, includes greater public participation in the permit process, and requires the collection of fees to completely offset all costs for the review, issuance, and maintenance of the permit program. The Act also requires states to establish a Small Business Assistance Program which aids small businesses in permit process, provides technical and compliance assistance, and provides information about pollution prevention methods.  The Environmental Engineering Associate will assist senior staff to: <ol style="list-style-type: none"> <li>1. develop revised regulations and procedures, recognizing small business concerns;</li> <li>2. develop standardized permit applications;</li> <li>3. identify and assist new permittees;</li> <li>4. provide assistance and information to permit applicants;</li> <li>5. review permit applications;</li> <li>6. prepare draft permits;</li> <li>7. develop the small business and pollution prevention programs;</li> <li>8. train regional and district permit liaisons;</li> <li>9. conduct inspections and compliance certifications;</li> </ol> and <ol style="list-style-type: none"> <li>10. establish a quality control/quality assurance audit program.</li> </ol>		

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COMPONENT Air Quality Management

Revised Date: 2/1/93

**Request For  
New Position**

Position Title Environmental Engineer II		No. of Positions 3	Range / Step 20A	Barg. Unit GG
Time Status Full Time	Staff Months 36	Location Various		Election District Various
<b>TYPE OF EXPENDITURE</b>		Amount	Justification  The new Clean Air Act of 1990 requires all states to establish a completely new operating permit program which takes into account small sources never permitted before, includes greater public participation in the permit process, and requires the collection of fees to completely offset all costs for the review, issuance, and maintenance of the permit program. The Act also requires states to establish a Small Business Assistance Program which aids small businesses in permit process, provides technical and compliance assistance, and provides information about pollution prevention methods.  The Environmental Engineer II will: 1. supervise and evaluate the activities of the permitting and compliance assurance staff; 2. develop and implement procedures to accomplish permitting and compliance assurance tasks; 3. review the technical and economic feasibility of methods to maintain the ambient air quality standards; 4. provide statewide technical support to other agencies and the private sector; 5. make presentations on the status of compliance efforts; 6. make recommendations for changes to department policy, procedures and regulations; 7. assure uniform implementation of State and Federal air quality regulations.	
Salary		\$144.2		
Benefits		\$54.3		
Premium Pay		\$0.0		
Other	19% Administrative	\$37.7		
Total Personal Services		\$236.2		
Travel	\$ 4,000 / FTE	\$12.0		
Contractual	\$ 6,000 / FTE	\$18.0		
Commodities	\$ 1,500 / FTE	\$4.5		
Equipment	\$ 7,000 / FTE	\$21.0		
Other				
Total Cost		\$291.7		
<b>FUNDING SOURCE FOR TOTAL COST</b>				
Federal Receipts	1002			
G.F. Match	1003			
General Fund	1004			
I-A Receipts	1007			
CIP Receipts	1061			
Other	Program Receipts	\$291.7		

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COMPONENT Air Quality Management

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Revised Date: 2/1/93

**Request For  
New Position**

Position Title Environmental Manager I (Small Business Advocate)			No. of Positions 1	Range / Step 20A	Barg. Unit Supervisory
Time Status Full Time	Staff Months 12		Location Anchorage	Election District Anchorage	
<b>TYPE OF EXPENDITURE</b>			Amount	Justification	
Salary			\$48.4	<p>The new Clean Air Act of 1990 requires all states to establish a completely new operating permit program which takes into account small sources never permitted before, includes greater public participation in the permit process, and requires the collection of fees to completely offset all costs for the review, issuance, and maintenance of the permit program. The Act also requires states to establish a Small Business Assistance Program which aids small businesses in permit process, provides technical and compliance assistance, and provides information about pollution prevention methods.</p> <p>The Environmental Manager I (Small Business Advocate) will:</p> <ol style="list-style-type: none"> <li>1. develop revised regulations, recognizing small business concerns;</li> <li>2. identify and assist small business permittees;</li> <li>3. develop standardized permit applications;</li> <li>4. prepare pollution prevention assistance programs;</li> <li>5. provide assistance and information to permit applicants;</li> <li>6. supervise the small business program;</li> <li>7. train regional and district small business liaisons;</li> <li>and</li> <li>8. report to the Small Business Compliance Advisory Panel.</li> </ol>	
Benefits			\$18.1		
Premium Pay			\$0.0		
Other 19% Administrative			\$12.6		
Total Personal Services			\$79.1		
Travel			\$40.3		
Contractual \$ 6,000 / FTE			\$6.0		
Commodities \$ 1,500 / FTE			\$1.5		
Equipment \$ 7,000 / FTE			\$7.0		
Other Compliance Advisory Panel Costs			\$25.4		
Total Cost			\$159.3		
<b>FUNDING SOURCE FOR TOTAL COST</b>					
Federal Receipts 1002					
G.F. Match 1003					
General Fund 1004					
I-A Receipts 1007					
CIP Receipts 1061					
Other Program Receipts			\$159.3		

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COMPONENT Air Quality Management

Revised Date: 2/1/93

**Request For  
New Position**

Position Title Attorney III		No. of Positions 1	Range / Step 22A	Barg. Unit Partially Exempt
Time Status Full Time	Staff Months 6	Location Juneau		Election District Juneau
<b>TYPE OF EXPENDITURE</b>		Amount	Justification The new Clean Air Act of 1990 requires all states to establish a completely new operating permit program which takes into account small sources never permitted before, includes greater public participation in the permit process, and requires the collection of fees to completely offset all costs for the review, issuance, and maintenance of the permit program. The Act also requires states to establish a Small Business Assistance Program which aids small businesses in permit process, provides technical and compliance assistance, and provides information about pollution prevention methods.  The Attorney III will: 1. issue opinions to interpret and apply legislation, regulations or other legal instruments; 2. draft enabling statutory authority; 3. perform comprehensive studies of legal questions where development of all background material is required; 4. advise and assist state agencies in conducting hearings and conferences and in preparing findings of fact, conclusions of law and decisions; 5. provide assistance to program staff on statutory procedures; 6. review State Implementation Plan revisions prior to submission to USEPA; and 7. review regulations prior to submission to Department of Law.	
Salary		\$26.7		
Benefits		\$9.7		
Premium Pay		\$0.0		
Other	19% Administrative	\$6.9		
Total Personal Services		\$43.3		
Travel	\$ 4,000 / FTE	\$2.0		
Contractual	\$ 6,000 / FTE	\$3.0		
Commodities	\$ 1,500 / FTE	\$0.8		
Equipment	\$ 7,000 / FTE	\$3.5		
Other				
Total Cost		\$52.6		
<b>FINDING SOURCE FOR TOTAL COST</b>				
Federal Receipts	1002			
G.F. Match	1003			
General Fund	1004			
I-A Receipts	1007			
CIP Receipts	1061			
Other	Program Receipts	\$52.6		

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COMPONENT Air Quality Management

Revised Date: 2/1/93

**Request For  
New Position**

Position Title Analyst Programmer III		No. of Positions 1	Range / Step 17A	Barg. Unit GG
Time Status Full Time	Staff Months 11	Location Juneau		Election District Juneau
<b>TYPE OF EXPENDITURE</b>		Amount	Justification	
Salary		\$35.1	<p>The new Clean Air Act of 1990 requires all states to establish a completely new operating permit program which takes into account small sources never permitted before, includes greater public participation in the permit process, and requires the collection of fees to completely offset all costs for the review, issuance, and maintenance of the permit program. The Act also requires states to establish a Small Business Assistance Program which aids small businesses in permit process, provides technical and compliance assistance, and provides information about pollution prevention methods.</p> <p>The Analyst Programmer III will:</p> <ol style="list-style-type: none"> <li>1. develop and maintain the air permit database system;</li> <li>2. develop and maintain a permit fee analysis and collection system;</li> <li>3. perform the duties of the LAN administrator, including routine system backups;</li> <li>4. write general instructions for using network programs;</li> <li>5. guide and advise less-informed colleagues on an informal basis in the use of programming languages and data processing techniques;</li> <li>6. research and respond to complaints regarding the permit application system; and</li> <li>7. train users in the use and application of user friendly data processing systems.</li> </ol>	
Benefits		\$14.1		
Premium Pay		\$0.0		
Other 19% Administrative		\$9.3		
Total Personal Services		\$58.5		
Travel		\$0.0		
Contractual \$ 6,000 / FTE		\$5.5		
Commodities \$ 1,500 / FTE		\$1.4		
Equipment \$ 7,000 / FTE		\$6.3		
Other				
Total Cost		\$71.7		
<b>FUNDING SOURCE FOR TOTAL COST</b>				
Federal Receipts	1002			
G.F. Match	1003			
General Fund	1004			
I-A Receipts	1007			
CIP Receipts	1061			
Other Program Receipts		\$71.7		

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Revised Date: 2/1/93

**Request For  
New Position**

Position Title Paralegal Assistant II		No. of Positions 1	Range / Step 16A	Barg. Unit GG
Time Status Full Time	Staff Months 11	Location Juneau		Election District Juneau
<b>TYPE OF EXPENDITURE</b>		Amount	Justification The new Clean Air Act of 1990 requires all states to establish a completely new operating permit program which takes into account small sources never permitted before, includes greater public participation in the permit process, and requires the collection of fees to completely offset all costs for the review, issuance, and maintenance of the permit program. The Act also requires states to establish a Small Business Assistance Program which aids small businesses in permit process, provides technical and compliance assistance, and provides information about pollution prevention methods.  The Paralegal Assistant II will: 1. assist in drafting enabling statutory authority; 2. assist in developing comprehensive and understandable regulations; 3. draft procedures for public participation in the permit process; 4. prepare draft regulations for pollution prevention; 5. provide assistance to program staff on regulatory procedures; 6. assist in developing the State Implementation Plan; 7. prepare program authority certifications to USEPA; 8. develop enhanced administrative review procedures; and 9. coordinate with established judicial review procedures.	
Salary		\$32.8		
Benefits		\$13.5		
Premium Pay		\$0.0		
Other	19% Administrative	\$8.8		
Total Personal Services		\$55.1		
Travel	\$ 4,000 / FTE	\$3.6		
Contractual	\$ 6,000 / FTE	\$5.5		
Commodities	\$ 1,500 / FTE	\$1.4		
Equipment	\$ 7,000 / FTE	\$6.3		
Other				
Total Cost		\$71.9		
<b>FUNDING SOURCE FOR TOTAL COST</b>				
Federal Receipts	1002			
G.F. Match	1003			
General Fund	1004			
I-A Receipts	1007			
CIP Receipts	1061			
Other	Program Receipts	\$71.9		

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Revised Date: 2/1/93

**Request For  
New Position**

Position Title Administrative Assistant II		No. of Positions 1	Range / Step 14A	Barg. Unit GG
Time Status Full Time	Staff Months 10	Location Juneau		Election District Juneau
<b>TYPE OF EXPENDITURE</b>		Amount	Justification  The new Clean Air Act of 1990 requires all states to establish a completely new operating permit program which takes into account small sources never permitted before, includes greater public participation in the permit process, and requires the collection of fees to completely offset all costs for the review, issuance, and maintenance of the permit program. The Act also requires states to establish a Small Business Assistance Program which aids small businesses in permit process, provides technical and compliance assistance, and provides information about pollution prevention methods.  The Administrative Assistant II will: 1. provide assistance and information to permit applicants; 2. issue standardized permit applications; 3. supervise procedures to track permit applications and fees; 4. implement reporting and auditing procedures; 5. supervise and audit permit documentation procedures; 6. assure uniform accounting procedures for permit fees; 7. coordinate program support functions; and 8. provide standardized managerial summaries of program activity.	
Salary		\$25.4		
Benefits		\$11.0		
Premium Pay		\$0.0		
Other	19% Administrative	\$6.9		
Total Personal Services		\$43.3		
Travel		\$0.0		
Contractual	\$ 6,000 / FTE	\$5.0		
Commodities	\$ 1,500 / FTE	\$1.3		
Equipment	\$ 7,000 / FTE	\$5.6		
Other				
Total Cost		\$55.2		
<b>FUNDING SOURCE FOR TOTAL COST</b>				
Federal Receipts	1002			
G.F. Match	1003			
General Fund	1004			
I-A Receipts	1007			
CIP Receipts	1061			
Other	Program Receipts	\$55.2		

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BRU Environmental Quality

COMPONENT Air Quality Management

Revised Date: 2/1/93

**Request For  
New Position**

Position Title Data Processing Clerk II			No. of Positions 1	Range / Step 09A	Barg. Unit GG
Time Status Full Time	Staff Months 11		Location Juneau	Election District Juneau	
<b>TYPE OF EXPENDITURE</b>			Amount	Justification	
Salary			\$21.0	<p>The new Clean Air Act of 1990 requires all states to establish a completely new operating permit program which takes into account small sources never permitted before, includes greater public participation in the permit process, and requires the collection of fees to completely offset all costs for the review, issuance, and maintenance of the permit program. The Act also requires states to establish a Small Business Assistance Program which aids small businesses in permit process, provides technical and compliance assistance, and provides information about pollution prevention methods.</p> <p>The Data Processing Clerk II will:</p> <ol style="list-style-type: none"> <li>1. verify document entry sheets for correctness;</li> <li>2. key enter data via computer terminal;</li> <li>3. access and provide specified data information;</li> <li>4. prepare diskettes for data entry;</li> <li>5. prepare information packets for potential permittees;</li> <li>6. prepare permit documentation and correspondence;</li> <li>7. implement reporting and auditing procedures;</li> </ol> <p>and</p> <ol style="list-style-type: none"> <li>8. develop standardized managerial summaries of fund activity.</li> </ol>	
Benefits			\$10.3		
Premium Pay			\$0.0		
Other 19% Administrative			\$5.9		
Total Personal Services			\$37.2		
Travel			\$0.0		
Contractual \$ 6,000 / FTE			\$5.5		
Commodities \$ 1,500 / FTE			\$1.4		
Equipment \$ 7,000 / FTE			\$6.3		
Other					
Total Cost			\$50.4		
<b>FUNDING SOURCE FOR TOTAL COST</b>					
Federal Receipts 1002					
G.F. Match 1003					
General Fund 1004					
I-A Receipts 1007					
CIP Receipts 1061					
Other Program Receipts			\$50.4		

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COMPONENT Air Quality Management

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Revised Date: 2/1/93

**Request For  
New Position**

Position Title Clerk Typist III		No. of Positions 3.5	Range / Step 08A	Barg. Unit GG
Time Status Full Time*	Staff Months 41	Location Various		Election District Various
<b>TYPE OF EXPENDITURE</b>		Amount	<b>Justification</b> The new Clean Air Act of 1990 requires all states to establish a completely new operating permit program which takes into account small sources never permitted before, includes greater public participation in the permit process, and requires the collection of fees to completely offset all costs for the review, issuance, and maintenance of the permit program. The Act also requires states to establish a Small Business Assistance Program which aids small businesses in permit process, provides technical and compliance assistance, and provides information about pollution prevention methods.  The Clerk Typist III will assist senior staff to: 1. prepare information packets for permittees; 2. provide assistance and information to permit applicants; 3. operate small businesses and pollution prevention hotlines; 4. issue and receive standardized permit applications; 5. develop procedures to track permit applications; 6. prepare permit documentation and correspondence; 7. develop correspondence tracking systems; and 8. develop and maintain application and permit files.	
Salary		\$74.8		
Benefits		\$37.8		
Premium Pay		\$0.0		
Other	19% Administrative	\$21.4		
Total Personal Services		\$134.0		
Travel		\$0.0		
Contractual	\$ 6,000 / FTE	\$20.5		
Commodities	\$ 1,500 / FTE	\$5.1		
Equipment	\$ 7,000 / FTE	\$23.8		
Other				
Total Cost		\$183.4		
<b>FUNDING SOURCE FOR TOTAL COST</b>				
Federal Receipts	1002			
G.F. Match	1003			
General Fund	1004			
IA Receipts	1007			
CIP Receipts	1061			
Other	Program Receipts	\$ 3.4		
* 3 Full Time 1 Half Time				

AGENCY Environmental Conservation

FY 95

Page 9 of 9

BRU Environmental Quality

COMPONENT Air Quality Management

Revised Date: 2/1/93

**Request For  
New Position**

## SSHB 39/AIR QUALITY

Representative Kay Brown

### Sponsor Statement

The Sponsor Substitute for HB 39, Air Quality, is a product of one of the most positive features of our system of government--the ability to reach compromise in order to serve the public interest. It was drafted by an advisory committee composed of representatives of all major sectors of the regulated community as well as a representative from the Alaska Environmental Lobby and one from the public.

The facts are easy to understand and irrefutable. The federal Clean Air Act of 1990 requires the State of Alaska to have a federally approved air quality program on the books by November 15, 1993, or risk the loss of its federal highway and air pollution funds. Those federal funds represent over \$200 million per year. Legislation to establish an approved air quality program for Alaska died in the last days of the 17th Legislature.

The bill before you was crafted in order to meet the needs of the Department of Environmental Conservation to develop a program that will be approved by the federal Environmental Protection Agency. In addition, important and specific elements of the program are defined in statute, providing regulated industries with clear criteria for compliance and protection from inflexible or unnecessary regulations.

#### Essential Features of Alaska's Air Program in SSHB 39:

- *Exclusive fund for Air Permit Program*
- *General Permits*
- *Small Business Assistance Program*
- *Flexible Fee Structure*
- *Criminal Penalties and Fines*
- *Local Programs*
- *Construction/Operating Permits*
- *Public Involvement/Review*



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 10  
1200 Sixth Avenue  
Seattle, Washington 98101

HJC2

*Buy Stamp*  
*cc: Len Vardle*  
*Sandor*  
*mead*

JAN 29 1993

Reply To  
Attn Of: AT-082

Honorable Walter J. Hickel  
Governor of Alaska  
P. O. Box 110001  
Juneau, Alaska 99811-0001

FEB - 9 1993

Dear Governor Hickel:

I want to acknowledge the outstanding job by your Department of Environmental Conservation in organizing and managing the Air Quality Legislative Working Committee and the excellent work of the Committee. We view Alaska's efforts to enact Clean Air Act legislation as the highest environmental priority this year.

We have completed a preliminary review of the Committee's draft bill and consider it an excellent basis to begin the legislative process. I congratulate the State's foresight to assemble a broad-based committee to develop the proposed legislation. This approach will hopefully reduce the time necessary to enact this much-needed legislation.

The Federal Clean Air Act Amendments require states to have an operating permits program in effect by November 15, 1993. I want you to know that we recognize the extensive work needed in order to meet this requirement, and that we are available to provide whatever assistance we can to the State of Alaska in this important environmental objective.

Successful passage of the legislation this year is absolutely critical in achieving a state-run air permit program in Alaska. I hope you will call on me if we can help you in your efforts in this regard.

Sincerely,

Dana A. Rasmussen  
Regional Administrator

cc: John Sandor, ADEC

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Dept. of Environmental Conservation  
Air Quality Section

## SSHB 39/ AIR QUALITY

Representative Kay Brown

### SECTIONAL ANALYSIS

#### ◆ Section 1.

**PURPOSE** - Enacts a statement of purpose that clearly establishes this bill as the means for Alaska to comply with the federal Clean Air Act Amendments of 1990. Compliance is necessary in order to retain federal highway and air pollution control funds.

#### ◆ Section 2.

**AS 46.03.150 CLASSIFICATION OF FACILITIES OR SOURCES; REPORTING** - This section serves two purposes. First, it allows certain facility types identified in federal law to be classified and listed in regulation rather than statute. Secondly, it enables the department to request information from any generator of air pollution in order to assess whether that activity potentially endangers public health or air resource standards.

#### ◆ Section 3.

**AS 46.03.152 PERMITS FOR CONSTRUCTION, MODIFICATION, OR OPERATION** -The section contains the basic authority to require construction and operating permits for subject facilities that have air pollution generating equipment. Subsection (b) allows a facility to begin operation even while its permit is in dispute if DEC's regulations so provide. This is commonly referred to as an "application shield."

(c) requires the permittee to comply with conditions of the permit and

(d) ensures that any permits issued by DEC meet federal, state and local requirements.

Subsection (e) describes under what conditions a source or facility may be exempted from the permit program. If the federal administrator exempts a facility, the Commissioner of DEC, after "considering the factors used by the administrator," and determining that public health and air quality effects do not provide a reasonable basis to regulate the source, may issue a similar exemption.

**AS 46.03.154 FACILITIES REQUIRING PERMITS** - This section delineates which facilities need either construction permits or operating permits. The section also calls upon the authority in AS 46.03.150 to enable classification or grouping of facility types

*New source  
or more  
stringent  
standard*

that are either unique relative to the need to acquire a permit under state or federal law or must be subject to a specific type of review under federal law as part of the permit review.

**AS 46.03.156 EMISSION CONTROL PERMIT PROGRAM REGULATIONS** - In this section, DEC authority to adopt regulations for the emission control permit program is enacted. The essential elements of the regulations are listed and certain criteria established. The general requirement that "The regulations must be reasonable and adequate, and provide flexibility in the operation of a facility consistent with 42 U.S.C. 7401-767q (Clean Air Act), as amended, and applicable federal regulations" is established in the statute.

**AS 46.03.158 ADMINISTRATIVE ACTIONS REGARDING PERMITS** - The language in this section specifies the timeliness for permit decisions.

◆ Section 4.

*50 Fed*  
**AS 46.03.161 AUTHORITY OF THE DEPARTMENT IN CASES OF EMERGENCY** - This section provides a mechanism for the Commissioner of ADEC to authorize the immediate operation of a source or facility either without a permit or in contravention with the terms of a permit when such actions are deemed necessary in an emergency situation.

**AS 46.03.163 REVIEW OF PERMIT ACTION** - Describes who, aggrieved by a permit action, may request an adjudicatory hearing by the department. Other than the owner or operator, only those persons who participated in the public comment process, or who have a private, substantive, legally protected interest under state law may request such a hearing. Only parties to such a hearing may obtain judicial review of the decision of that hearing.

*~100 perm. etc*  
**AS 46.03.165 GENERAL OPERATING PERMITS** - Allows the Department to issue "general operating permits" for specific types of facilities. For example, DEC may decide that all rural power generators, within certain parameters, qualify for a "general operating permit." In that case, it would not be necessary for each individual facility to have a unique permit developed for it.

**AS 46.03.167 OBJECTION BY FEDERAL ADMINISTRATOR** - Provides that no permit may be issued over the objection of the federal administrator. While a petition objecting to the issuance of a permit is pending with the federal administrator, the a facility will be considered in compliance with the requirements of the act.

**AS 46.03.169 RESPONSIBILITIES OF OWNER AND OPERATOR** - Both the owner and operator of facilities are responsible for compliance with this act. The department is required to send, by certified mail, a copy of AS 46.03.791 CRIMINAL PENALTIES FOR AIR POLLUTION, to all permit applicants. Within 10 days, all permittees must post a copy of the DEC notice at conspicuous locations within the facility.

◆ Section 5.

AS 46.03.171 PERMIT ADMINISTRATION FEES - Establishes a permit administration fee structure based on dollars per hour of service required to process individual permit applications. The permit administration fees are used to recover "direct" program costs, that is the cost of processing the particular facility's permit, including compliance inspections and permit reviews.

AS 46.03.172 EMISSION FEES - In addition to the permit administration fee established in AS 46.03.171, each permittee is assessed an emission fee based on dollars per ton of air contaminant emitted per year. The emission fees are used to recover the "indirect" program costs, that is costs such as rent, utilities, program administration, management, accounting etc. The rate structure shall be designed in such a way as to distribute the indirect program costs equitably among facility types, sizes and categories. In two years, the department shall issue a report on the emission fee structure and adopt regulations based on the report. Periodically, but at least every three years, the department shall evaluate the fee emission fee structure to see that it is equitable.

AS 46.03.173 CLEAN AIR PROTECTION FUND - The necessary fund to receive the permit administration and emission fees is established.

AS 46.03.175 SPECIAL ACCOUNT - A fund to receive civil or criminal penalties, fines, assessments, or damages, and interest, attorney fees etc. related to violations of the act is established in the general fund. The name of the account is the "clean air protection account."

AS 46.03.176 SMALL BUSINESS ASSISTANCE PROGRAM - As required by the federal Clean Air Act, sec. 507(a), the Small Business Assistance Program is established.

AS 46.03.178 POWER TO LIMIT THE SMALL BUSINESS ASSISTANCE PROGRAM - Allows the department to exclude a business facility or category of facilities from the Small Business Assistance Program if it determines they have sufficient technical and financial capabilities to meet the requirements of the act.

AS 46.03.179 COMPLIANCE ADVISORY PANEL - As required by the federal act, a seven member advisory panel is selected by the Governor, the Commissioner and the Legislature. The panel meets semi-annually and prepares advisory opinions on the effectiveness of the small business assistance program. They also report to the federal administrator concerning the program's compliance with the Paperwork Reduction, Regulatory Flexibility and Equal Access to Justice Acts.

◆ Section 6.

AS 46.03.185 AIR POLLUTION FROM OUTER CONTINENTAL SHELF ACTIVITIES - Provides the ability for the department to regulate mineral and oil & gas extraction activities located between the coast and 25 miles seaward. State authority is normally limited to

No Fed.

that area within three miles of the coast. Section 328 of the Clean Air Act provides a mechanism to obtain delegation of federal authority and thereby extend the geographic range of authority for certain activities.

◆ Section 7.

AS 46.03.212 LOCAL AIR QUALITY CONTROL PROGRAMS - This section establishes that local programs are approved by the department through a cooperative agreement which delineates the responsibilities of both agencies. With affirmative agreement of the department, a municipality or local air quality district may establish more stringent requirements than the state program if public health or air quality effects warrant it. No findings of public health or air quality effects are necessary for a local program to enact a more stringent mobile source program. Only the state may collect the permit administration and emission fees described in the act.

AS 46.03.214 INADEQUACY OF LOCAL PROGRAMS - This section specifies the process for identifying and rectifying deficiencies in executing the terms of the interagency cooperative agreement.

◆ Section 8.

AS 46.03.230 STATE AND FEDERAL AID - The language in this section is the principal authority for local programs to receive air permit funds collected by the state to support the staff and other expenditures of executing a permit program at the local level. The section also provides for local programs to receive federal funds without approval of the department. In the case of Clean Air Act Section 105 grant funds, EPA as part of the State-EPA Agreement will request state review of grant applications submitted by the local government programs. The section 105 federal grants are the main, but not sole source of federal funds for executing state and local air programs.

◆ Section 9.

AS 46.03.249 DEFINITIONS - Twenty four definitions of terms used in the act.

◆ Sections 10, 11 and 12.

Conform existing statutes to new citations created by this act.

◆ Section 13.

AS 46.03.791 CRIMINAL PENALTIES FOR AIR POLLUTION - The severity of a penalty is matched with the damage caused by a criminal action and the state of mind of the person performing the crime. Based on section 113 of the Clean Air Act in which penalty

gradations are specified to be used in federal court if EPA is taking the enforcement action aided by the U.S. Department of Justice. The penalties of a Class B misdemeanor are linked with a criminal negligence state of mind when an action is performed that does not impair life or cause serious bodily injury. Potential penalties of a Class C felony are linked with a reckless state of mind when the action places a person in imminent danger of death or serious bodily injury. Potential penalties of a Class A felony are linked with a knowing state of mind when the person knows that another is placed in imminent danger of death or serious bodily injury.

- Sections 14 thru 26.

Amendments to conform existing state statutes to the provisions and citations in this act. Sections 10 and 11 provide the federally required authority to assess civil penalties of \$10,000 per day for air pollution violations.

- Section 27.

Repealers.

- Section 28.

**REGULATIONS** - Regulations may not take effect until November 15, 1993.

- Section 29.

Section 28 takes effect immediately.

- Section 30.

All sections, except section 28, take effect on November 15, 1993.

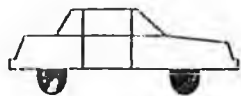


**DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION**

**Air Quality Management**



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



### Mobile Sources

Cold Start  
CO Standards  
Inspections

## EFFECTS OF 1990 AMENDMENTS



**CLEAN UP POOR  
AIR QUALITY AREAS**

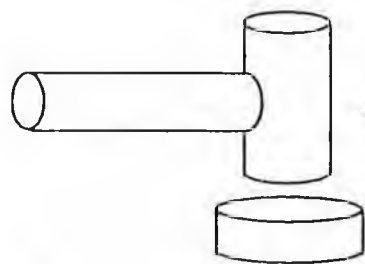
189  
HAZARDOUS  
AIR  
POLLUTANTS

### Clean Air Act Amendments

### State Operating Permit Program

Nov. 15, 1990

- One Permit: All Requirements of Act
- Federal Emission Standards
- Technology to Reduce Hazardous Emissions
- Voluntary Emission Limits to Avoid Permits
- Compliance Monitoring and Reporting
- Public and EPA Review
- Administrative and Judicial Review of Actions



### Enforcement

State in Lead Role

~~ACID  
RAIN  
REDUCTIONS~~  
Alaska  
Exempt

Small Business  
Assistance Program

# WHO NEEDS AIR PERMITS

## 1. FACILITIES THAT EMIT 100 TONS PER YEAR

*Of Any Criteria Air Contaminant*

*( CO, SO<sub>2</sub>, NO<sub>2</sub>, Pb, PM, O<sub>3</sub> )*

## 2. FACILITIES THAT EMIT 10 TONS PER YEAR

*Of Any Hazardous Air Contaminant*

*OR*

*25 TPY Aggregate of Multiple Contaminants*

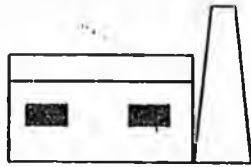
## 3. FACILITIES SUBJECT TO FEDERAL EMISSION LIMITS

*New Source Performance Standards*


*Implementing Technology for Hazardous Emissions*

# WHO NEEDS AN AIR PERMIT ?


## EXISTING PERMIT PROGRAM



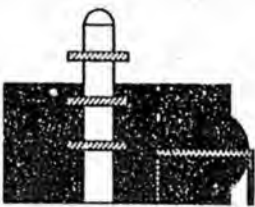
New Facilities  
potential emissions of 250 tpy



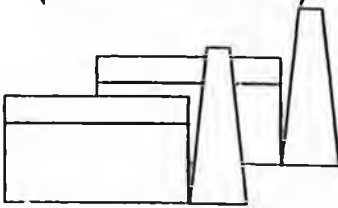
Incinerators 1000 lb/hr



New Diesel Engines - > 2350 hp




Petroleum Refineries  
(federal standard)




Facilities Processing > 5 tons / hour

## 1990 CLEAN AIR ACT



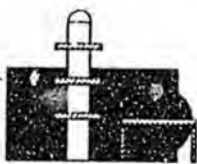
Existing and New Facilities  
potential emissions of 100 tpy



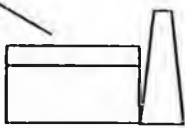
Incinerators  
1000 lb/hr & Sewage Sludge



Existing & New  
Diesel Engines - > 740 hp



Petroleum Refineries



Facilities emitting  
Hazardous Air Pollutants  
potential of 10 / 25 tpy



State Air  
Quality Permit  
to Operate

# FOCUS OF PERMIT RESTRUCTURING

## - RETAIN STATE JURISDICTION -

*Responsive to Public & Industry Needs*

*Prevent Federal Intervention*

## - FULL SERVICE ON AIR PERMITS -

*Single Permit \ All Requirements*

## - DESIGNED W/ CHECKS & BALANCES -

*Public Health Protection w/ Accountability for Good Science*

*Fee Structure that Stimulates Efficiency*

*Public Participation that's Timely & Time Certain*

*General Permits for Streamlined Issuance*

## - KNOWLEDGE AND UNDERSTANDING OF REQUIREMENTS -

*Explicit and Detailed Laws*

# AIR QUALITY PERMIT BILL

## ALASKA AIR STATUTES REQUIRED & ESSENTIAL FEATURES

## BILL SECTION TITLE

---

Exclusive Fund for Air Permit Program	Clean Air Protection Fund Special Account
Create Small Business Assistance Program Create Advisory Panel Provide Assistance to Larger Group	Small Business Assistance Program Power to Limit Program Compliance Advisory Panel
Modify Criminal Provisions and Fines	Criminal Penalties for Air Pollution
Construction Permits v. Operating Permits Agency/Operator Emission Limits to Avoid Need for Permit	Classification of Facilities or Sources; Reporting Permits for Construction, Modifications or Operations Responsibilities of Owner and Operator Facilities Requiring Permits Administrative Actions Regarding Permits Emissions Control Permit Program Regulations Air Pollution from Outer Continental Shelf Activities Authority of the Department in Cases of Emergency
General Permits	General Operating Permits
Flexibility for Permit Fee Structure	Permit Administration Fees Emission Fees
Ability to Implement New Federal Rules in Permits Reopening of Permits	Incorporated into other sections
Emission Limits Based on Health Risks or Available Technology	Incorporated into other sections
Local Governments to be Implementing Partners	Local Air Quality Control Program Inadequacy of Local Program State and Federal Aid
Administrative Penalties for Violations Deter EPA Intervention	Not in Bill
Public Involvement in Permits Public Review of Permits Appeal through Adjudication Judicial Review EPA Review Public to Petition EPA	Review of Permit Action  Objection by Federal Administration
Retain & Update Existing Statutes	

# CAA Deadlines & Sanctions

## DEADLINES

- 11/15/92 Submit Small Business Assistance Plan  
Submit SIP Revisions for Non-Attainment Areas
- 11/15/93 Submit State Operating Permit Program

## SANCTIONS

After 11/15/93 EPA may impose any of the following:

See CAAA 90 - Section 502(d)(2)(A)

- Prohibition on Federal Highway Funds statewide
- Require 2 to 1 offset of emissions for new sources in non-Attainment areas
- Withhold any Federal Air Grant Funds
- Prohibit expansion of airports in Non-Attainment areas

5/15/95 EPA must impose all of the following:

See CAAA 90 - Section 502(d)(2)(B)

- Prohibition on Federal Highway Funds statewide
- Require 2 to 1 offset of emissions for new sources in non-attainment areas
- Withhold any Federal Air Grant Funds
- Prohibit expansion of airports in Non-Attainment areas

11/15/95 EPA must implement Federal Permit Program

See CAAA 90 - Section 502(d)(3)

EPA Operating permits -

- Little consideration for Alaska-specific Concerns
- Federal program offers less operational flexibility
- Federal program has more facility reporting requirements
- No General Permits
- Will take longer to issue than State permit

EPA collects permit fees -

- Collected fees go to Federal government, not Alaska
- Federal Permit Fees likely to be higher than State Permit Fees
- Federal Permit Fees will not reduce program support from State General Funds

# PERMIT FEE DESIGN

## - " PERMIT ADMINISTRATION FEE " - \$ / hour

*Pay for Direct Services Provided*

*Low Demand - Low Costs / High Demand - High Costs*

*Agency Accountability w/ Evident Billings*

*Fee Rate Projected to be \$ 78 / hour*

## - " EMISSION FEES " - \$ / emission

*Pay for Intangible Benefits of Program*

*- reconcile fed laws to Alaska situations*

*- management control for consistency*

*- rent, utilities, accounting etc.*

*Policy Directive to Achieve " Equitable Apportionment "*

*between facility types & sizes*

*Interim Rate w/ Mandate for Further Research*

*Fee Rate Projected to be \$ 5 / Ton of Emission*

**AIR QUALITY LEGISLATIVE WORKING COMMITTEE**

**COMMITTEE MEMBERS**

1/28/93

<b>NAME</b>	<b>AFFILIATION</b>	<b>REPRESENTING</b>	<b>CONTACT NO.</b>
Lee Browning	Municipality of Anchorage	Alaska Municipal League	Phone 343-4928 Fax 343-6740
Steven Taylor	British Petroleum Exploration Inc.	Alaska Oil & Gas Assoc.	Phone 564-4057 Fax 564-5020
Harry Noah Gene Andrews (alternate)	Consultant	Council of Alaska Producers (mining trade assoc.)	Phone 265-3100 or 452-4653 Fax 265-3180 or 451-4305
John Iani Rick Lauber (alternate)	Pacific Seafood Processors Assoc.	Pacific Seafood Processors	Phone (206) 281-1667 or 586-6366 Fax (206) 283-2387 (Both) 463-5298
Linda Dianne Rabb	Rural Alaska Power Assoc.	Rural Electric Utilities	Phone 345-5771 Fax 345-5878
Carl Harmon	Chugach Electric Association	Large Electric Utilities for Alaska Rural Electric Cooperative Assoc. (ARECA)	Phone 762-4739 Fax 562-0027
Larry Opperman	U.S. Air Force	U.S. Air Force	Phone 552-7753 Fax 552-1533
Aimee Boulanger	Alaska Center for the Environment	Environmental Advocacy Groups for the Alaska Environmental Lobby	Phone 274-3621 Fax 274-4145
Eric Myers	Self	General Public	Phone 272-3034 Fax 272-7122
Tom Chapple	Alaska Dept. of Environmental Conservation (ADEC)	ADEC	Phone 465-5100 Fax 465-6129

# SUMMARY

of the

## 1990 CLEAN AIR ACT

Prepared  
September 16, 1992  
by  
Alaska Department of Environmental Conservation

On November 15, 1990, President Bush signed into law amendments to the federal Clean Air Act (Act). The revised law initiated sweeping changes in air quality management throughout the nation. The summary below will provide you with some basic information on this complex law.

### TITLE I - AIR POLLUTION PREVENTION AND CONTROL

*Section 109 of the Act provides for the establishment of National Ambient Air Quality Standards. Primary standards are designed to "...protect public health with an adequate margin of safety." Secondary standards "...protect the public welfare from any known or anticipated adverse effects associated with the presence of such air pollutants in the ambient air." To date, National Ambient Air Quality Standards exist for ozone, carbon monoxide, nitrogen dioxide, sulfur dioxide, particulate matter, and lead.*

*Section 110 of the Act requires states to submit a plan to EPA "...which provides for implementation, maintenance, and enforcement..." of the ambient air quality standards. This plan is often referred to as the State Implementation Plan (SIP). In Alaska, this information is contained in the State Air Quality Control Plan and the Alaska Air Quality Control Regulations.*

*Section 111 of the Act provides for the establishment of Standards of Performance for New Stationary Sources (NSPS). These standards establish emission limitations for specific air pollution sources, or categories of sources, based upon the use of feasible technology. Each source category standard is updated every few years to reflect technological advances.*

*Section 112 of the Act (Title III of the 1990 Amendments) provides for the establishment of National Emissions Standards for Hazardous Air Pollutants (NESHAPS). Prior to 1990, this provision of law regulated specific industrial processes which emitted any of eight hazardous air pollutants. As part of the 1990 Act, 189 hazardous air pollutants were established by Congress. EPA is required to develop a list of categories of stationary sources that emit the listed pollutants. In developing this list, EPA must consider the*

quantity of pollution typically emitted and the potential danger to public health. The Act then requires EPA to establish maximum achievable control technology (MACT) emission or work practice standards for these selected source categories over a period of twelve years. EPA is also establishing "area source" categories which will be required to apply generally available control technology (GACT) to reduce emissions. The list of hazardous air pollutants may be revised by EPA. In addition, any person may petition EPA to modify the list of hazardous air pollutants.

Section 113 of the Act gives EPA federal enforcement authority when the provisions of a permit or applicable implementation plan are violated and states fail to adequately initiate enforcement. EPA's authority varies depending upon the violations, but generally includes: issuing orders, assessing administrative penalties, and bringing civil or criminal action.

Part C of Title I maintains the previously established program for the Prevention of Significant Deterioration (PSD). This program is intended to prevent long term degradation of air quality in regions where the air quality is currently good. This will be achieved through a permit program that requires new industry sources to install Best Available Control Technology (BACT) to reduce out of stack emissions and sets a "cap" on ground level pollution increases. A permit can not be issued to a project if it causes a violation of either the National Ambient Air Quality Standards or the air quality increment caps.

Part D of Title I contains the requirements for implementation plans for regions not in attainment with the National Ambient Air Quality Standards. It sets the groundwork to help nonattainment regions reach attainment with the air quality standards. Part D also contains a requirement for the review of new or modified major stationary sources such as power plants and oil refineries. Both pre-construction permits and operating permits are required for major sources located within nonattainment areas. In Alaska, Anchorage and Fairbanks are nonattainment for carbon monoxide, with Eagle River and the Mendenhall Valley of Juneau being nonattainment for airborne particulate matter.

## **TITLE II - NATIONAL EMISSION STANDARDS ACT**

### **Part A - Motor Vehicle Emission Standards**

Section 202 of the Act provides for the establishment of emission standards for automobiles and light duty trucks. The standards become progressively more stringent with the newer model vehicles. In the future, Alaska will be affected by cold weather carbon monoxide standards for new vehicles. Tailpipe standards can only be set by the federal government (California excepted) and can potentially address other mobile sources, including airplanes and ships.

Section 207 of the Act provides for the establishment of an Inspection and Maintenance (I & M) program in carbon monoxide nonattainment areas to assure proper maintenance

*of vehicular pollution control equipment. Automobiles, trucks, and vehicles up to 12,000 pounds laden weight in Anchorage and Fairbanks are subject to section 202 and are required to pass an emission inspection every year.*

*Section 211 of the Act provides for the regulation of fuels. Reformulated fuel programs, such as oxygenated gasoline (Oxy-Fuels) and low sulfur diesel fuel, are intended to reduce tailpipe emissions through more complete combustion of the fuel (oxy-fuel) or by reducing the contaminant pollutant in the fuel (sulfur). The Oxy-Fuels program currently being implemented in Anchorage and Fairbanks should bring these areas into attainment with the national and state ambient air quality standard for carbon monoxide.*

*Part B provides for the establishment of aircraft emission standards and enforcement. Section 231 provides for: the analysis of the effect of aircraft emissions on air quality, "...the technological feasibility of controlling such emissions"; and it provides for the development of aircraft emission standards.*

*Part C establishes clean fuel vehicle programs which encourages alternative fuels, such as propane or compressed natural gas, and flexible-fuel and dual-fuel vehicles.*

### **TITLE III - GENERAL**

*Title III provides for the general administration of the Act, including Emergency Powers (section 303), Citizen Suits (section 304), Judicial Review (section 307), and Economic Impact Analysis and Assessment (sections 312 & 317, respectively).*

### **TITLE IV - ACID DEPOSITION CONTROL**

*Title IV establishes a program to reduce acid rain deposition. Emission of sulfur dioxide and oxides of nitrogen, mostly from large fossil fuel fired electric utilities, will be controlled during the implementation of a two phase emission reduction program. Title IV does not apply to Alaska, Hawaii, Guam, or Samoa because of the physical distance of these states from the problem areas of New England, Eastern Canada and selected western mountain regions.*

### **TITLE V - PERMITS**

*Sections 502, 503, & 504 of the Act provide for the establishment of uniform, nationwide air pollution permitting programs directed by the states. All major sources of air pollution will be required to obtain air permits under the new program.*

*A major source is either: a facility which has the potential to emit 100 tons per year or more of a criteria air pollutant (sulfur dioxide, carbon monoxide, nitrogen oxides, lead, particulate matter or ozone via hydrocarbon emissions); a facility which has the potential*

*to emit 10 tons per year or more of any hazardous air pollutant, or 25 tons per year or more of any combination of hazardous air pollutants; or a facility for which federal emissions standards exist under the New Source Performance Standards provision of the Act.*

*States must develop an air pollution permitting program complying with the provisions of Title V, or risk losing jurisdiction of their air quality resources. Alaska is currently in the process of developing an air quality statutory bill. New statutory authority is necessary before compliance with Title V can be achieved.*

*Section 507 provides for the establishment of a Small Business Stationary Source Technical and Environmental Compliance Assistance Program. The small business assistance program (SBAP) is envisioned to take a pro-active role in helping small businesses understand and comply with the complex provisions of the Act.*

## **TITLE VI - STRATOSPHERIC OZONE PROTECTION**

*Title VI provides the framework for reducing emissions of ozone depleting chemicals, such as refrigerants, consistent with the Montreal Protocol.*

*Section 602 of the Act lists Class I and Class II substances. Class I substances include many of the chlorofluorocarbons (CFC's), halons, carbon tetrachloride, and methyl chloroform. Class II substances include many of the hydrochlorofluorocarbons (HCFC's).*

*Section 604 details the scheduled phase-out of production and consumption of Class I substances, while section 605 details the scheduled phase-out of production and consumption of Class II substances. Section 608 prohibits any person from knowingly venting refrigerants to the atmosphere. It also mandates the regulation of servicing and disposal of refrigeration and air conditioning units. Section 609 provides for regulating the service of automotive air conditioners. Other portions of Title VI require regulation of nonessential uses of products containing Class I substances, and provide for the identification of alternatives to the use of ozone depleting substances.*

AIR QUALITY LEGISLATIVE WORKING COMMITTEE

December 28, 1992

The Honorable Bill Hudson  
Alaska State House  
P.O. Box V  
Juneau, AK 99811

Dear Representative Hudson:

Upon request of the Department of Environmental Conservation, we, the members of the Air Quality Legislative Working Committee conducted meetings throughout this past fall. The sole purpose of our deliberations was to provide a committee work product that would aid ADEC, the Governor and the Alaska Legislature in deliberating and enacting laws that will continue state jurisdiction of the air quality permit program in Alaska pursuant to Title V of the 1990 Clean Air Act.

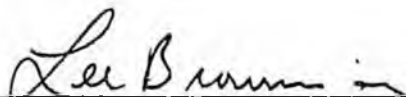
To assist you and your staff in understanding the work of the committee, a copy of the transmittal packet recently sent to ADEC Commissioner John Sandor is enclosed. This contains the draft language for the bill and other documents that focus on the substance of the deliberations, the compromises reached and the views of members on specific subjects.

In an effort to be of further assistance, the committee has scheduled a meeting for 1 pm on January 19 at the Governor's Conference Room on the third floor of the Capital Building in Juneau. This meeting is to be an informational session to provide an opportunity for you, your staff and other interested parties to become familiar with the committee, our deliberations of this fall and the contents of the draft AIR QUALITY PERMIT BILL.

We look forward to seeing you at the January meeting.

Sincerely,

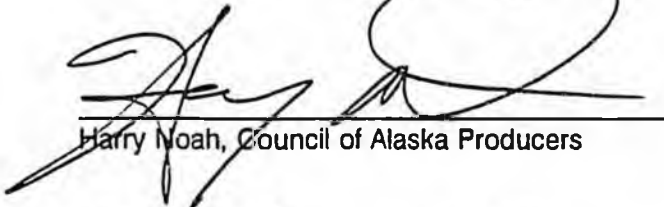
Committee Members as listed



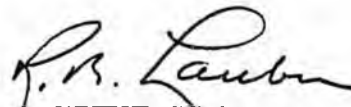
Lee Browning, Alaska Municipal League



Steven Taylor, Alaska Oil & Gas Assoc.



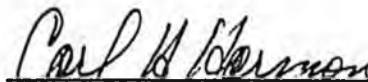
Harry Noah, Council of Alaska Producers



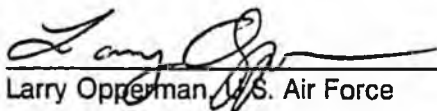
Rick Lauber, Pacific Seafood Processors Association



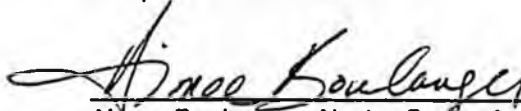
Linda Dianne Rabb, Rural Alaska Power Association



Carl H. Harmon, Alaska Rural Electric Cooperative Association



Larry Opperman, U.S. Air Force



Aimee Boulanger, Alaska Center for the Environment/Alaska Environmental Lobby



Eric Myers, General Public



Tom Chapple, Alaska Dept. of Env. Conservation - Committee Chair

# **AIR QUALITY LEGISLATIVE WORKING COMMITTEE**

December 28, 1992

Mr. John Sandor  
Commissioner  
Alaska Department of Environmental Conservation  
410 Willoughby Ave., Suite 105  
Juneau, AK 99801-1795

Dear Commissioner Sandor:

Upon request of your office, the Air Quality Legislative Working Committee has collectively drafted language to address all statutory provisions necessary to obtain federal approval of an air quality permit program in Alaska pursuant to Title V of the 1990 Clean Air Act.

The Committee respectfully requests that the enclosed Attachment # 1 entitled DRAFT AIR QUALITY PERMIT BILL be used to introduce a bill by the Governor to the Alaska Legislature when it convenes in January. The purpose of our collective endeavor was to provide a committee work product that would aid you, the Governor and the Alaska Legislature in deliberating and enacting laws that will continue state jurisdiction of the air quality permit program. It is our opinion that the enclosed draft bill meets the requirements of federal law in a manner that considers the needs of all Alaskans.

The draft bill is in-part a compromise among the many diverse interests of the constituents represented by individual committee members. Further, this language is the product of a diligent effort to keep the deliberations focused and limited only to elements essential for federal approval of the air permit program. In this regard, we respectfully request that any bill that may be introduced to the Alaska Legislature be limited in content and subject to that contained within this draft.

The many attachments to this correspondence are provided to inform you of the committee's procedures and the substance of our deliberations. Attachment # 4, entitled SUMMARY OF PRINCIPAL ISSUES OF DEBATE, should be of special value to you and others interested in the committee's work. It was drafted to highlight important deliberations, minority positions, compromises of noted significance and to express the intent of the committee in implementing selected provisions of the draft bill.

Although review of the material contained in these attachments will provide a comprehensive understanding of the committee's activities, the following statements

summarize a few of the most important points.

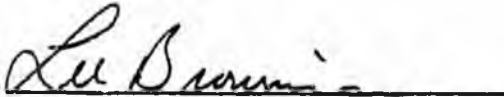
- The department organized the committee and requested that deliberations begin with the document entitled CS FOR SENATE BILL NO. 388 (RESOURCES) Work Draft dated 5/8/92.
- The Committee adopted a mission statement, meeting protocol and adopted the contents of the CS Work Draft as a basis to begin deliberations.
- The committee decided to use the ADEC handout entitled ALASKA AIR STATUTES REQUIRED AND ESSENTIAL FEATURES as a guide to setting the agenda and work priorities for developing a draft bill.
- It was agreed that the committee would only support language as a committee product if that language was fully debated and adopted through the voting regime specified in the protocol.
- Committee members strived to produce a document that would be acceptable for legislative review. In situations where the committee could not reach consensus on detailed language, general language was adopted to guide the department in adopting implementing regulations.
- Committee members were quite concerned that a mechanism be found to inform you and the Alaska Legislature of the specific statements and views of members on issues of importance, especially when those positions were in the minority. The transmittal letter and its attachments are to address this concern.
- As the committee members anticipated, the subject of permit fees was one of the most difficult tasks, but unanimous agreement was ultimately achieved.
- Committee members were concerned that the text of the bill be kept relatively trim and its subject matter not deviate from the topic of air quality permits in order to enhance the possibility of succeeding in the legislative process.

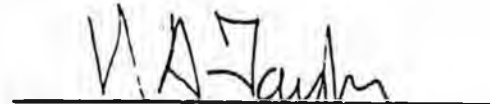
During the period of September 21 through December 28 nine committee meetings were held. All except the last meeting were two days in duration and all but one (Fairbanks) were held in Anchorage. The meetings were recorded and open to the public. Staff of several legislators attended and participated in most of the meetings.

Debate on several subjects reflected the strongly held views of many diverse interests represented on the committee. Although debate became heated at times, members strove to seek common ground in arriving at compromise language. Most provisions of the draft bill were supported by unanimous vote of committee members. The voting record for both first consideration and reconsideration vote are reflected in Attachment # 5.

Each member of the committee appreciates the opportunity you and the department have provided to enable the affected parties of this federal mandate to work together in helping to shape this legislative proposal. The committee wishes to continue at your service, provided such effort will assist you and the Alaska Legislature in deliberations of this subject during the forthcoming legislative session. In addition, if a bill is enacted into law, we would welcome the opportunity to assist the department in shaping the supporting regulations.

SINCERELY,

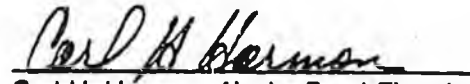
  
 Lee Browning, Alaska Municipal League

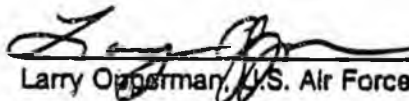
  
 Steven Taylor, Alaska Oil & Gas Assoc.


  
 Harry Noah, Council of Alaska Producers

  
 Rick Lauber, Pacific Seafood Processors Association

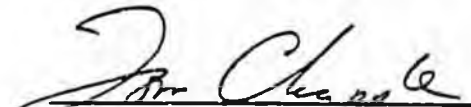
  
 Linda Dianne Rabb, Rural Alaska Power Association

  
 Carl H. Harmon, Alaska Rural Electric Cooperative Association

  
 Larry Opperman, U.S. Air Force

  
 Aimee Boulanger, Alaska Center for the Environment/Alaska Environmental Lobby

  
 Eric Myers, General Public

  
 Tom Chapple, Alaska Dept. of Env. Conservation

cc: Mr. Kris Lethin, Legislative Liaison, Office of the Governor, w/enclosures  
 Ms. Janice Adair, Assistant Commissioner, ADEC, w/enclosures  
 Members of the Alaska State Legislature w/enclosures 1-6  
 Members of the Air Quality Legislative Working Committee w/enclosures

Enclosures:

- Attachment #1: Draft Air Quality Permit Bill
- Attachment #2: Mission Statement
- Attachment #3: Meeting Protocol
- Attachment #4: Summary of Principal Issues of Debate
- Attachment #5: Committee Voting Record
- Attachment #6: Excerpts of Transcript Text
- Attachment #7: Meeting Transcripts (available upon request)

ARTICLE \_ PERMIT PROGRAM REQUIREMENTS

Sec. 46.14.020. CLASSIFICATION OF FACILITIES OR SOURCES; REPORTING. (a) The department, by regulation, may classify facilities or sources that, in the department's determination, are likely to cause or contribute to air pollution, according to the levels and types of emissions and other characteristics that relate to air quality. The department may make a classification under this subsection applicable to the state as a whole or to a designated area of the state. The department shall base the classifications on consideration of health, economic, and social factors, sensitivity of the receiving environment, and physical effects on property.

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

AS 46.14.200. PERMITS FOR CONSTRUCTION, MODIFICATION, OR OPERATION. (a) Before constructing, installing, modifying, reconstructing, or establishing a facility subject to AS 46.14.205(a), the owner and operator must obtain a construction permit under this chapter.

(b) Except as provided in AS 46.14.290, before operating a facility subject to AS 46.14.205(b), the owner and operator must obtain an operating permit.

(c) The permittee shall comply with the terms and conditions of that permit, a modifying compliance order or other determination made by the department under this chapter.

(d) The department shall ensure that permits issued, modified, amended, renewed, or revoked and reissued under this chapter comply with all applicable federal, state, and local requirements.

(e) If the federal administrator exempts a source from the requirements of 42 U.S.C. 7661a(a)(Clean Air Act, sec.502(a)), the commissioner, by regulation, shall consider those factors used by the administrator in reaching this or other determination and shall issue a similar determination unless public health or air quality effects provide a reasonable basis to regulate the source.

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

- (1) a new facility that emits or has the potential to emit 250 tons per year (TPY) or more of a regulated air contaminant;
- (2) a new facility of a type classified under AS 46.14.020 that emits or has the potential to emit 100 TPY or more of a regulated air contaminant;
- (3) a new facility of a type classified under AS 46.14.020
  - (I) as having the potential to violate the ambient air quality standards, or
  - (II) pursuant to a finding by the department, that public health or air quality effects provide a reasonable basis to regulate the source;
- (4) a new facility that emits or has the potential to emit 10 TPY or more of a hazardous air contaminant, or 25 TPY or more, in the aggregate, of two or more hazardous air contaminants;
- (5) an existing facility for which
  - (A) a modification is proposed that would increase actual emissions of an air contaminant by an amount equal to or greater than the emission quantity set out in regulations adopted under AS 46.14.010; or
  - (B) reconstruction is proposed.

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

- (1) emits or has the potential to emit 100 TPY or more of a regulated contaminant;
- (2) emits or has the potential to emit 10 TPY or more of a hazardous air contaminant, or 25 TPY or more, in aggregate, of two or more hazardous air contaminants;
- (3) contains a source subject to federal new source performance standards under 42 U.S.C. 7411 (Clean Air Act, sec.111) or national emission standards for hazardous air pollutants issued under 42 U.S.C. 7412 (Clean Air Act, sec.112); or
- (4) contains another stationary source designated by
  - (I) the federal administrator, by regulation, or
  - (II) by the department, pursuant to a finding that public health or air quality effects provide a reasonable basis to regulate the source.

Sec. 46.14.210. EMISSION CONTROL PERMIT PROGRAM REGULATIONS. (a) The department shall adopt regulations to address all substantive and procedural elements of the emission control permit program not addressed in statute, except elements that relate only to the internal management of the department and do not affect the public or govern the way the department deals with the public. The regulations must be reasonable and adequate, and provide flexibility in the operation of a facility consistent with 42 U.S.C. 7401 - 7671q (Clean Air Act), as amended, and applicable federal regulations. The regulations must include the following:

- (1) a standard permit application form that meets the requirements of federal regulations adopted under 42 U.S.C. 7661a(b) (Clean Air Act, sec. 502(b));
- (2) procedures for preparation and submission of a monitoring, reporting, and quality assurance plan and, if required, a compliance schedule describing how a permitted facility will comply with the applicable requirements of AS 46.14.200 - 46.14.295;
- (3) procedures for
  - (A) specifying when permit applications and renewal requests are to be submitted;

- (B) specifying the time duration for department review of permit applications;
  - (C) processing and reviewing an application;
  - (D) providing public notice, including opportunity for public comment and hearing; and
  - (E) issuing permits, including procedures for issuing permits for temporary operations or open burn activities;
- (4) reasonable standard permit conditions, including conditions for
    - (A) emission standards and limitations;
    - (B) monitoring, recordkeeping, and reporting for facilities subject to AS 46.14.205;
    - (C) inspection and entry;
    - (D) certification of corporate or other business organization reports;
    - (E) annual certification of compliance;
    - (F) excess emission or process deviation reporting; and
    - (G) equipment malfunctions and emergencies;
  - (5) fees, and procedures for collecting fees;
  - (6) provisions addressing late payment or non-payment of fees, which may include assessment of penalties and interest;
  - (7) duration of permits;
  - (8) procedures for modifying, or amending a permit that provide flexibility in the operation of the facility, including procedures to allow changes to a permitted facility without requiring a permit modification, consistent with the purposes of this chapter and with 42 U.S.C. 7401 -7671q (Clean Air Act);
  - (9) reasonable provisions for renewing, reopening, revoking and reissuing, and terminating a permit consistent with the purposes of this chapter and 42 U.S.C. 7401 - 7671q (Clean Air Act);
  - (10) provisions allowing for physical or operational limitations that will reduce a facility's emissions to levels below those that would make the facility subject to part or all of AS 46.14.200 and 46.14.205;

- (11) provisions authorizing facility operation while a permit application is pending, consistent with 42 U.S.C. 7661b(d) (Clean Air Act, section 503(d));
- (12) provisions for assuring that compliance with an operating permit issued under this chapter, shall be deemed compliance with 42 U.S.C. 7661a (Clean Air Act, section 502) and other provisions of state or federal law specifically provided for by the department consistent with 42 U.S.C. 7401-7671q (Clean Air Act) and regulations adopted thereunder; and
- (13) provisions allowing for certification of inspectors who evaluate compliance with the terms and conditions of a permit, order, regulation or other provision of law authorized under this chapter.

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

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

- (1) a construction permit within 30 days after the close of the public comment period;
- (2) an operating permit, other than a general operating permit or temporary 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. A phased schedule must ensure that at least one-third of the applications submitted during the initial application period will be acted on by the department during each of the three years following the initial application period. The department shall give priority to the issuance of permits for new facilities and modifications of existing facilities.

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

**Sec. 46.14.860 AUTHORITY OF DEPARTMENT IN CASES OF EMERGENCY. (a)**

When the commissioner finds that facts and circumstances necessitate emergency use of an unpermitted source, or emergency use of a permitted source in a manner not authorized by the permit, the commissioner may waive procedural requirements of this chapter and may authorize emergency use of the source. When acting under this section the commissioner shall impose conditions necessary to protect human health, welfare and the environment, and may impose other conditions as he finds necessary and appropriate.

(b) Any authorization issued under this section shall automatically terminate within a reasonable time after abatement of the emergency and in no event shall any such authorization continue in effect for longer than 30 days from the date of issuance, provided, however that the commissioner may re-issue the authorization if warranted.

(c) The commissioner may delegate his authority under this section to deputy commissioners and division directors so that an authorized delegatee is always available.

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

**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 all facilities 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 takes effect when the application is determined to be complete unless the department notifies the applicant that the general permit is not applicable to the facility.

Sec. 46.14.\_\_\_\_ Air Pollution from Outer Continental Shelf Activities. (a) The department shall seek delegation from the federal administrator to implement and enforce the terms and provisions of 42 U.S.C. § 7627 (Clean Air Act, sec. 328) for the Pacific and Arctic Ocean areas offshore of the State of Alaska. The department may adopt regulations as necessary to acquire delegation.

(b) In adopting regulations under this section, the department shall ensure that facilities located within 25 miles of the seaward boundary of the State of Alaska are subject to the same air quality control requirements as would be applicable if the facility were located in the corresponding onshore area.

(c) In this section, "corresponding onshore area" means, with respect to any facility located within 25 miles of the seaward boundary of the State of Alaska, the onshore attainment or nonattainment area that is closest to the facility, unless the Commissioner determines that another area with more stringent requirements relating to control and abatement of air pollution may reasonably be expected to be affected by emissions from the offshore facility. Such determination shall be based on the potential for air contaminants from the facility to reach the other onshore area and the potential of such air contaminants to affect the efforts of the other onshore area to attain or maintain any federal or state ambient air quality standard or to comply with the provisions of the Prevention of Significant Deterioration program.

(d) For purposes of this section, facilities located within 25 miles of the seaward boundary of the State of Alaska include any vessel servicing or associated with the facility while at the facility or en route to or from the facility and within 25 miles of the facility.

Sec. 46.14.245. OBJECTION BY FEDERAL ADMINISTRATOR. (a) An operating permit may not be issued under this chapter until the federal administrator approves the permit, or until 45 days after a copy of the final draft permit has been provided by the department

to the federal administrator, whichever is earlier. If, during the 45-day period, the federal administrator files an objection with the department, the department shall notify the applicant of the objection. The permit may not be issued until the objection is resolved or the permit is revised to meet the objection of the federal administrator. Upon request of an applicant, the department shall assist the applicant in an effort to resolve promptly an objection by the federal administrator.

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

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

AS 46.14.820 RESPONSIBILITIES OF OWNER AND OPERATOR. Notwithstanding use of the conjunctive or disjunctive in a section of this chapter, prior to issuance of a permit under AS 46.14.225 both the owner and operator of a facility are responsible for compliance with this chapter and regulations adopted under this chapter. If the owner and operator of the facility are separate persons, only one person is required to discharge a specific responsibility. Subsequent to issuance of a permit under AS 46.14.225 only the permittee is responsible for permitted operations. The permittee must have a designated agent for service of process in the state of Alaska.

## ARTICLE \_\_. PERMIT PROGRAM FEES

Sec. 46.14.\_\_ PAYMENT OF FEES AND FEE STRUCTURE (a) The owner or operator of a facility who is required to apply for a permit under AS 46.14.205 shall pay all assessed permit administration fees established under (b) of this section. Any person named as permittee in a permit issued under section 46.14.200 shall pay all assessed emission fees established under (c) of this section and assessed permit administration

fees which are incurred after the date of permit issuance. Fees shall be paid to the department.

(b) The permit administration fee rate shall be specified in regulation and set on the basis of dollars per hour of service provided for a specific permittee. The fee rate may be modified periodically to reflect increases or decreases in the actual reasonable costs of providing such services. Permit administration fees will be assessed on a periodic basis after service is rendered, but the department may assess a retainer toward this fee at the time work commences on a permit application or at such time as departmental services are requested for the development of a permit application.

(c) Emission Fees.

- (1) The emission fee rate shall be set on the basis of dollars per ton of air contaminant emitted. Emission fees shall be assessed annually on or before July 1 and based upon a facility's assessable emissions for the upcoming fiscal year. The department may allow for installment payment of assessed fees.
- (2) Facility owners or operators shall have the first year's fee prorated to the next annual payment date and shall pay the initial emission fee upon commencement of lawful facility operation unless authorized to pay by installments. The first year's emission fee shall not duplicate any fee paid by a permittee under AS 44.46.025 for the same sources and same calendar period. In such circumstances, the department shall provide a credit toward the emission fee in the amount of the unused balance of the fee collected under AS 44.46.025. The unused balance to be credited shall be based on prorating the total original fee under AS 44.46.025 for that time period that emission fees apply.
- (3) The emission fee rate shall be designed to distribute the total annual incurred costs described under (e) in a manner such that each permittee is assessed an annual emission fee that reflects an equitable apportionment of the fees paid by each facility type, size or category. In making such apportionment under (c)(5) of this section, the department shall consider factors such as exemptions or reduced rates for small amounts of

emissions, limits upon assessable emissions, exempting small business facilities from the costs of the Small Business Assistance Program, air pollution prevention efforts, and other factors that may ensure fair distribution of the costs described under (e).

- (4) The initial fee rate for the first two years following approval of the permit program by the federal administrator shall be set on the basis of dollars per ton of assessable emissions. In calculating assessable emissions for the first two years, the department shall not include any amount in excess of 4000 tons per year of an air contaminant not defined as a regulated air pollutant under 42 U.S.C. 7661a(b)(3)(B)(ii) (Clean Air Act, sec. 502 (b)(3)(B)(ii)).
- (5) For the third and subsequent years, the emission fee rate shall be established by the department in regulation to implement the policy established in (c)(3). The regulation shall be based upon the findings of a report, made available to the public with proper notice, which examines
  - (A) fees assessed;
  - (B) alternative fee rates or formulas;
  - (C) types, sizes or categories of facilities, their respective emission quantities and their previous or proposed fee burden;
  - (D) apparent inequities encountered in the initial fee rate;
  - (E) total costs incurred or anticipated to be incurred under (e) of this section; and
  - (F) other factors that ensure fair distribution of the costs described in (e) of this section.
- (6) The department shall periodically, and at least every three years, evaluate the fee rate to determine if it is responsive to the policy established in (c)(3) and shall provide its findings in a report.

(d) For purposes of this section, "permit administration fees" are fees assessed to recover costs incurred by the department in providing the services listed in this subsection to a specific facility associated with the permit program established under this chapter

- (1) providing preapplication consultation, assistance, and completeness review of applications for a permit, permit amendment, permit modification or renewal;
- (2) reviewing or assisting in preparation of facility specific permit support documents including, on-site evaluations;
- (3) receiving, reviewing, preparing, processing and issuing permits, permit amendments, modifications, reopenings, renewals and revocations and reissuance;
- (4) preparing general permits under AS 46.14.240, but allocating costs on an equitable basis to each facility covered by the general permit;
- (5) performing facility inspections and compliance evaluations;
- (6) reviewing, compiling and reporting facility specific emission, ambient monitoring or process measurement data;
- (7) preparing, evaluating or processing plans or documents to obtain facility compliance or rectify non-compliance with permit terms and conditions, but not including any enforcement actions; and
- (8) assessing and collecting delinquent permit administration fees and emission fees.

(e) For purposes of this section, "emission fees" are fees assessed to recover costs incurred by the department for execution of the permit program established under this chapter which are generally not associated with service provided to a specific facility such as rent, utilities, permit program management and administrative and accounting services. The department shall identify these costs in regulation.

(f) For purposes of this section, an "assessable emission" is the quantity of each air contaminant for which emission fees are assessed and is the lesser of

- (1) the annual rate of emissions (in tons per year) of each air contaminant authorized by the facility's operating permit; or
- (2) the projected annual rate of emissions (in tons per year) of each air contaminant by the facility based upon previous actual annual emissions, if the permittee can demonstrate its previous actual annual rate of emissions

to the department through monitoring, modelling, calculations or other method, acceptable to the department.

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

- (1) fees, penalties, and interest collected by the department under AS 46.14.250 and 46.14.255, as required by 42 U.S.C. 7661a(b)(3)(iii)(Clean Air Act, sec. 502(b)(3)(C)(iii)) for state participation in the emission control permit program; and
- (2) appropriations to the fund.

(b) The money deposited into the clean air protection fund under (a)(1) of this section shall only be used to cover the reasonable direct and indirect costs required to support the permit program under this chapter, and those activities of the small business assistance program that are directed at facilities subject to this chapter, not including any court cost or other costs associated with any enforcement action.

**Sec. 46.14.850. SPECIAL ACCOUNT.** An administrative penalty, and any interest, attorney fees, and costs collected under AS 46.14.830, and any civil penalties, assessments, or damages collected under AS 46.03.760 or 46.03.790 as a result of a violation relating to this chapter, shall be deposited in the general fund and credited to a special account called "The Clean Air Protection Account".

## **ARTICLE \_\_. SMALL BUSINESS ASSISTANCE PROGRAM**

**Sec. 46.14.400. DEVELOPMENT OF PROGRAM.** A small business assistance program is established in the department. The program shall be included in the state air quality control plan under AS 46.14.030.

**Sec. 46.14.410. SCOPE OF PROGRAM.** (a) The scope of the small business assistance program shall, by regulation, meet the requirements of 42 U.S.C. 7661f(a) (Clean Air Act Sec. 507(a)).

(b) The department shall provide assistance as described in (a) of this section to a requesting facility that is not a small business concern as defined in 15 U.S.C. 631 but that is subject to the requirements of this chapter, if the legislature appropriates money from the general fund for this purpose.

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

(b) Nothing in AS 46.14.410(b) precludes the department from excluding any business facility or category thereof that the department finds to have sufficient technical and financial capabilities to meet the requirements of this chapter.

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

(b) The panel consists of

- (1) two members, who are not owners or representatives of owners of small business facilities, selected by the governor to represent the general public;
- (2) one member selected by the commissioner to represent the department; and
- (3) four members, who are owners or representatives of owners of small business facilities, selected as follows:

- (A) one shall be selected by the president of the senate and one shall be selected by the speaker of the house;
- (B) if there are members of the senate who are not part of the majority caucus of the senate, the leader of the largest nonmajority group shall select a panel member, if all members of the senate are in the majority caucus, then the president of the senate shall select a second panel member in addition to the selection authorized under (A) of this paragraph;
- (C) If there are members of the house who are not part of the majority caucus of the house, the leader of the largest nonmajority group shall select a panel member; if all members of the house are in the majority caucus, then the speaker of the house shall select a second panel member in addition to the selection authorized under (A) of the paragraph.

(c) The compliance advisory panel shall

- (1) elect a chair and agree upon procedures by which the panel will function;
- (2) meet annually, or at the call of the chair and give public notice of panel meetings as required under AS 44.62.310 - 44.62.312;
- (3) prepare advisory opinions concerning the effectiveness of the small business assistance program, difficulties encountered in making the program efficient and effective, and degree and severity of enforcement;
- (4) make periodic reports to the administrator concerning the compliance of the small business assistance program with requirements of 44 U.S.C. 3501 (Paperwork Reduction Act), 5 U.S.C. 601 (Regulatory Flexibility Act), and 5 U.S.C. 504 (Equal Access to Justice Act);
- (5) review information designed to assist small business facilities in complying with this chapter to ensure that the information is understandable by laypersons; and
- (E) have the small business advocate designated under AS 46.14.410(a)(12) assist the panel in the development and dissemination of panel reports and advisory opinions.

(d) Members selected under (b)(1) and (b)(3) shall serve for a term of four years. Upon initial formation of the advisory panel, one member appointed under (b)(1) and two members appointed under (b)(3) shall have a term of two years.

## ARTICLE \_\_. LOCAL AIR QUALITY PROGRAMS

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

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

(c) If the department finds that the location, character, or extent of particular concentrations of population, air contaminant sources, the geographic, topographic, or meteorological considerations or a combination of these factors make impracticable the maintenance of appropriate levels of air quality without an areawide air pollution control program, the department may determine the boundaries within which a program is necessary and direct that a program spanning those boundaries is the only acceptable alternative to direct state administration.

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

- (1) the respective duties and authority of the department and the municipality or local air quality district in the administration of the local air quality control program;
- (2) the authority of the municipality or the local air quality district to employ staff to administer the local air quality control program;
- (3) duties of staff employed under (2) of this subsection;
- (4) respective enforcement responsibilities of the department and the municipality or the local air quality district.

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

(f) A municipality or a local air quality district administering a program under this section shall administer its local air quality control program according to this chapter, regulations adopted under this chapter, and its cooperative agreement under (d) of this section. A municipality or local air quality district's program may upon a finding by the local agency and an affirmative agreement by the department, establish a more stringent requirement of the stationary source permit program authorized under AS 46.14, if public health or air quality effects warrant the additional or more stringent requirement.

(g) A determination, order, permit, or permit action issued under a local air quality control program is considered to be a determination, order, permit, or permit action of the department.

(h) Notwithstanding any other provision or rule of law, the department may not delegate or enable any other department or government entity to establish fee rates or collect fees under AS 46.14. \_\_\_<sup>1</sup>

*Notes:*

*1) reference section of AS 46.14 is the section entitled "Payment of Fees and Fee Structure".*

**Sec. 46.14.510. INADEQUACY OF LOCAL PROGRAM.** (a) If a municipality or a local air quality district has an approved air quality control program under AS 46.14.500 and

the department determines that the program is being implemented in a manner that fails to meet the terms of the cooperative agreement or is otherwise being inappropriately administered, the department shall give written notice, setting out its determination, to the municipality or local air quality district. Within 45 days after giving written notice, the department shall conduct a public hearing on the matter.

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

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

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

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

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

(b) A municipality or local air quality district with a local air quality control program may apply for, receive, administer, and spend federal aid for the control of air emissions or the development and administration of the program.

#### **ARTICLE \_\_. CRIMINAL PENALTIES FOR AIR POLLUTION**

**Sec. 46.03.791. CRIMINAL PENALTIES FOR AIR POLLUTION.** (a) After receiving a certified notice from the department that such conduct is punishable by criminal sanctions, a person is guilty of a Class A misdemeanor if the person, with criminal negligence

- (1) fails to provide essential information or provides false material information, or makes a false material statement or certification in an application, notice, record, report, permit, or other document filed, maintained, or used for purposes of compliance with AS 46.14 or a regulation adopted under AS 46.14;
- (2) falsifies, disables, or fails to install any monitoring device required to be maintained under AS 46.14, a regulation adopted under AS 46.14, or a permit issued by the department or a local air quality control program under 46.14; or
- (3) violates any material condition of a permit issued under AS 46.14 not otherwise included in (1) or (2).

(b) A person is guilty of a Class A felony if the person knowingly releases, or causes to be released into the ambient air, an air contaminant without a permit issued

under AS 46.14, or in excess of permitted levels, and who knows at the time that he thereby places another person in imminent danger of death or serious bodily injury.

(c) A person is guilty of a Class C felony if that person recklessly releases or causes to be released into the ambient air an air contaminant without a permit issued under AS 46.14 or in excess of permitted levels and he thereby recklessly places another person in imminent danger of death or serious bodily injury.

(d) A person is guilty of a Class A misdemeanor if that person, with criminal negligence emits or causes to be emitted air contaminants without a permit required under AS 46.14 or other authorization issued by the department or established in law.

(e) Each day on which a violation described in this section occurs is considered a separate violation.

(f) In this section,

(1) "criminal negligence" has the meaning given in AS 11.81.900(a)(4);

(2) "recklessly" has the meaning given in AS 11.81.900(a)(3);

(3) "knowingly" has the meaning given in AS 11.81.900(a)(2); provided however, that in determining whether a person acted knowingly,

(A) the person charged is responsible only for actual awareness or actual belief possessed; and

(B) knowledge possessed by a person other than the defendant, but not by the defendant, may not be attributed to the defendant; except that in proving a person's possession of actual knowledge, circumstantial evidence may be used, including evidence that a defendant took affirmative steps to be shielded from relevant information.

(4) It is an affirmative defense to a prosecution that the conduct charged was freely consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of-

(A) an occupation, a business, or a profession; or

(B) medical treatment or medical or scientific experimentation conducted by professionally approved methods and such other person had been made aware of the risks involved prior to giving consent. The

defendant may establish an affirmative defense under this subparagraph by a preponderance of the evidence.

(g) For purposes of (a), a person is deemed to have received notice if the certified notice was signed by a responsible corporate official or other official who, with apparent or actual authority, represents the person. The certification shall include a representation that the notice will be displayed and communicated by the official.

(h) Notwithstanding AS 12.55.035(b), upon conviction of an offense under subsection (a), a defendant who is not an organization may be sentenced to pay a fine of not more than \$ 10,000 for each separate offense.

#### ARTICLE \_\_. GENERAL PROVISIONS

Sec. 46.14.900 DEFINITIONS. (DEFINITIONS AS NECESSARY TO BE TAKEN FROM CS FOR SENATE BILL NO. 388 (RESOURCES) BY AK DEPT OF LAW)

MISSION STATEMENT

for

AIR QUALITY LEGISLATIVE WORKING COMMITTEE

The Department's air quality management goal is to safeguard public health and the environment by fostering the use of technology and education which enables economic development with minimal degradation to the air and preserves the high level of existing air quality for the enjoyment and well being of all Alaskans.

The mission of this committee is to work cooperatively to recommend to the Administration and the Legislature proposed changes to state law that: comply with the provisions of the 1990 Clean Air Act; foster air quality programs based on sound science; and retain accountability and responsiveness to the guidance and direction of our citizens through recognition that the state and local governments are the appropriate entities to manage and protect the air resources of Alaska.

adopted 9/22/92

**AIR QUALITY LEGISLATIVE WORKING COMMITTEE  
MEETING PROTOCOL**

**I. GENERAL MEETING CRITERIA**

**1. Public Meetings:**

All committee meetings will be open to the general public. Meeting dates, times and locations will receive prior public notice and special notice will be sent to all members of the legislature. Ad-hoc subcommittee sessions are not an official function of the committee, but are generally sessions that will allow individual groups to discuss the bill or issues germane to the bill with DEC to foster a greater understanding of the Clean Air Act or issues of importance to a specific group as related to the bill. These meetings will generally be informal and not publically noticed, but will be open meetings.

**2. Public Participation:**

Specific times will be established on meeting agendas for public question and answer sessions and for public testimony.

**3. Amendments to the Draft Legislative Bill:**

Following discussion and debate, any proposed amendment will be subject to committee vote. Committee approval of any amendment requires a 2/3 majority vote of all members present and voting for both the "first consideration" vote and the "reconsideration" vote. Reconsideration voting shall not occur on the same day as the first consideration vote and only after legal review by the Dept. of Law and review by the DEC Commissioner's Office. Every effort will be made to expedite this review. An Assistant Attorney General and/or a representative of the Commissioner's Office will be present at many of the meetings and available for council.

Committee approval by 2/3 majority vote is to be viewed as a primary, but not sole indication of support or dissention concerning a provision of the draft bill. It is anticipated that unanimous support of a given provision of the draft bill will be rare. Committee members who vote in opposition to a provision will be provided an opportunity to present the reasons for dissention. Further, the committee will determine if a conflict resolution session would be fruitful in reconciling the objection(s) to the provision. Regardless, positions of dissention by members will be part of the

committee record and specifically brought to the attention of the Legislature.

#### **4. Record of Meetings:**

Each meeting will be recorded in audio, with a transcription of the proceeding produced. Unless unique conditions prevail, the meetings will generally not be open to teleconferencing.

#### **5. Duties of the Committee Chair:**

The committee chairman is generally responsible for the execution of all meetings in a professional and orderly manner. The committee chair will provide printed materials as necessary to inform participants and carry out the agenda.

The chair will work in good faith to assist the committee in developing amendments that will meet the requirements of the Clean Air Act, federal regulations in 40 CFR 70, and Department policy. The chair can not assure that the Department will approve the actions or amendments proposed by the committee. The chair will promptly notify the committee when committee proposals appear to diverge from requirements of law or the generally policy of the Department.

#### **6. Committee Member Alternates:**

In the event that a committee member is unable to attend a meeting(s), the member shall notify the committee chair if another individual is to serve as an alternate in their behalf.

#### **7. Committee Action:**

Unless otherwise specifically provided for, any action of the committee which receives a majority vote of all attending members shall be considered an approved action of the committee. Absentee voting will not be conducted.

#### **8. Ad-hoc Subcommittees:**

Ad-hoc subcommittee meetings are to be held as a non-official function of the Air Quality Advisory Committee. The purpose of these meetings is to provide an opportunity for each of the representatives to conduct a work session between their constituent members and DEC staff to obtain a broader understanding of the Clean Air Act requirements, how these

requirements may directly affect their activities or functions and to discuss conceptual ideas that may be brought to the Committee for further discussion. Interested parties are to arrange specific meeting times and locations with the chair within the reserved time blocks.

Official subcommittees may be appointed by the chairman with the consent of the committee to perform functions germane to the mission of the committee.

## **II. AGENDA SPECIFIC FEATURES**

### **1. Sequence of Actions for Amendments:**

- \* Chair to open meeting agenda to proposed amendments on a specific subject
- \* Committee to select a "set" of proposed amendments for consideration
- \* Discussion and debate of selected amendments
- \* Opportunity for public question and answer
- \* Public testimony
- \* First consideration vote
- \* DEC and DOL review
- \* Reconsideration vote prefaced by discussion if necessary
- \* Resolution of objections to amendments if necessary

### **2. Agenda Items:**

In addition to evaluating proposed amendments, the meeting agenda will include other subjects as may be deemed necessary or appropriate by the chair to meet the overall goal of producing a draft legislative bill that best serves the interests of the State.

### **3. Meeting General Sequence of Business:**

- \* Open meeting
- \* Consideration of requests for agenda changes if any
- \* Reconsideration vote(s) if any pending
- \* Continuation of old business from previous mtg.
- \* Conclude committee action on previous business
- \* Begin new business
- \* Close meeting

amended 10/2/92

# AIR QUALITY LEGISLATIVE WORKING COMMITTEE

## TRANSMITTAL DOCUMENT ATTACHMENT #4

### SUMMARY OF PRINCIPAL ISSUES OF DEBATE

1/04/92

#### **INTRODUCTION:**

The purpose of this document is to present a summary of the discussion, the debate and the compromises reached on the most salient issues before the committee in developing a proposed legislative bill. Attachment #6 entitled "Excerpts of Transcripts" provides identification of locations within the transcripts for individual discussions and statements mentioned here. The committee transcripts reflect that issues of substantive debate fall within several somewhat distinct categories. This document is structured with respect to those categories which are:

1. Agreements on Protocol, Agenda and Initial Language;
2. The Small Business Assistance Program
3. Fees Paid by Permit Holders
4. The Dedicated Fund & Special Account
5. The Permit Program Components
6. Local Air Quality Programs
7. Criminal Penalties for Air Pollution
8. Public Involvement in Permits

## **ISSUE #1: AGREEMENTS ON PROTOCOL, AGENDA AND INITIAL LANGUAGE**

**Overview:** Committee members were concerned that 1) the process of adopting language for a draft bill be designed to allow issues to be resolved through open debate and compromise, while also enabling dissenting and minority positions to be carried forward to the legislative forum, 2) that the committee work focus on those issues necessary to receive federal delegation of the permit program and 3) that the initial language for discussion (CS FOR SENATE BILL NO. 388 (RESOURCES) work draft of 5/8/92) is a document that incorporates previous agreements and compromises. Unavoidably, this document is flavored by the participants and subjects of those previous negotiations. Some committee members were concerned that using this document would result in unconsciously carrying forward language and concepts into a committee product that wasn't an accurate reflection of the intent of this group.

### **Substance of Discussion & Resolutions:**

**Protocol-** ADEC developed a draft meeting protocol, proposing a committee voting process to adopt language for inclusion in a committee product. The environmental community advocated that the 2/3 majority vote concept be replaced with a consensus process whereby unanimous support by members would be the criteria for accepting language into a committee draft bill. The environmental community thought that consensus was the only appropriate process for decision making by this committee as more than 2/3 of the committee representatives were from industry or other entities needing air quality permits. Several of the members, including ADEC, were of the opinion that a 2/3 supporting vote was an adequate "bright line" test. Depending upon the subject matter, it was believed by several members that for some issues it would be impossible to obtain a unanimous vote. In general, all members believed it was in the common interest to provide a mechanism for dissenting and minority views to be carried forward as part of the committee record and made readily available to the legislature. The matter was resolved by committee adoption of the meeting protocol that incorporates the 2/3 vote process with a reconsideration vote (note: a representative of the environmental community was not yet serving on the committee when this motion was made). Additionally, it was clarified that a verbatim record of all meetings would be made and a transmittal document would be prepared to enable the legislature to be aware of the dissenting views on the controversial subjects of the proceedings.

When the committee was first formed, the department identified one seat for the environmental community. The environmental community specifically requested in writing the creation of additional seats to bring greater diversity to the committee (enclosed). Specifically, they sought positions for the general public, tourism industry, wildlife experts and public health specialists, and small business as well as the environmental community. The department agreed to one more seat for a representative of the general public. The environmental community put forward the nomination for that seat.

**Agenda-** Lengthy discussions during the first few meetings focused upon what subjects should be deliberated by the committee, which subjects are required to be in statute for federal approval of the permit program and what order they should be addressed. The committee was briefed on all of the sections contained within the CS FOR SENATE BILL NO. 388 (RESOURCES) work draft dated 5/8/92 and which of those subjects are either directly required by federal law or are generally viewed to be essential to the efficient and responsive execution of the permit program in Alaska. Overall, the views of the committee members reflected that the committee agenda should focus only on subjects germane to the permit program. Within that framework, first deliberation would be devoted to subjects that were absolutely required to receive federal delegation, followed by those viewed as essential for state flexibility and efficiency and if time remained the agenda would be opened to non-essential subjects but still limited to the permit program. The Committee chair would develop detailed meeting agendas prior to each meeting, but the agenda would generally follow the order of subjects put forward in an ADEC handout entitled "Alaska Air Statutes Required and Essential Features" (enclosed).

**Initial Language-** ADEC requested that the committee use the document entitled CS SENATE BILL NO. 388 (RESOURCES) work draft dated 5/8/92 (hereafter referred as CS Work Draft) as starting language for the committee's deliberations. It was the department's position that this document reflected to a large extent the culmination of work performed on the "Air Bill" during the period of the 1992 legislative session. This particular draft did not receive legislative committee debate or action. Some committee members expressed concern as to why this particular document was being recommended by ADEC since it was not a product of the legislature and other alternative legislative committee drafts were available. Although there were discussions to the contrary, in general, the committee realized that it must begin with some previously drafted language. To create new language from scratch would require far too much time in light of the goal to have a draft bill prepared prior to the upcoming legislative session. Two committee members suggested that the committee use the language of House Bill 377 which was subject to extensive legislative debate. The debate was resolved when the committee decided to adopt the language of the CS Work Draft for consideration. However, it was clarified that under the adopted protocol, language would not become a committee product until the specific language for a section of the bill was adopted by both first consideration vote and reconsideration vote. Further, for purposes of examining alternative language, other versions of the 1992 session bills could be used by committee members. Copies of HB 377 House Judiciary Committee bill were distributed.

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## **ISSUE # 2 : SMALL BUSINESS ASSISTANCE PROGRAM**

**Overview:** The small business assistance program is a required feature of any state permit program to aid small businesses in understanding and complying with the requirements of the Clean Air Act. The program as described by Congress will probably

be quite small in Alaska. Alaska has some unique small businesses that do not fit the federal definition of small business, yet will exhibit the situation that Congress intended to address by the program. These Alaska small businesses are the many small electric power generators. The language in the bill is crafted to address this Alaska situation by allowing the small business program to be expanded to other entities. If the expanded services are provided, federal law prohibits the use of permit fees to fund the activity. Other funds must be used. The federally described small business program is to be fully funded by the permit fees.

**It is the committee's desire that the 'purposes' section of the bill include language to indicate that the small business assistance program be located within the air quality management section of the department.**

**Substance of Discussion and Resolutions:**

As part of the tasks authorized under the section entitled **Scope of Program**, the committee supports the agency audit concept mentioned in Sec. 507(a) of the Act to assist small businesses in complying with the Act, provided that certain protections can be accomplished to keep the audit records as confidential information. To accomplish the agency "complimentary" or non-enforcement audit in a confidential manner, additional changes in law would be necessary concerning the provisions of public records. This change was not accomplished as part of the draft bill due to time limitations. The committee discussed the concept that information learned in an audit would be held confidential for a specified period of time viewed to be adequate for the operator to take corrective action. The confidentiality of the audit inspections is not intended to disguise violations nor are the audits to replace or reduce performance of compliance inspections.

The **Compliance Advisory Panel** is a mandatory provision of the program to serve as an aid in assuring that the program meets the needs of the effected small businesses. This language describes the minimum sized panel, however, it is designed so that members have staggered terms of service in order to preserve a corporate memory during periods of member turnover.

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**ISSUE # 3: FEES PAID BY PERMIT HOLDERS**

**Overview:** The Clean Air Act requires that permit fees fund 100% of the direct and indirect costs of executing the permit program. Because fees are such a critical subject to the regulated community, more than three of the nine committee meetings were dedicated to this subject. Crafting language to achieve equity between all permittees on their respective fee burden was the greatest single issue of debate and compromise for the committee.

To achieve specific advantages, the fee structure is a bifurcated approach: one fee,

"permit administration fees", to address funding those tasks that are performed to directly serve a permit applicant or permittee and another fee, "emission fee", to fund what may be called indirect costs of executing the permit program. The initial emission fee rate authorized in the proposed statute is to be valid for only the first two years of the permit program. After that date, the agency must adopt a rate or formula in regulation based upon the experience of the first two years and further research. Although the statute purposely does not set the fee amounts, the permit administration fee rate is expected to be about \$64 per hour with the emission fee rate anticipated to be about \$5 to \$7 per ton of air contaminant emitted.

Agreement to fee language was adopted only after, and premised upon, ADEC presented a draft program plan which indicated probable costs of the permit program, the number of staff required and how permit fees would breakout for various types of facilities located in Alaska. Regardless that unanimous support for the language was obtained, some committee members expressed reservation that this fee structure would carry increased accounting costs vs. other alternative fee structures and may also result in not collecting fees for all expenses incurred by the department.

**Background Information** - ADEC distributed an agency document entitled "AIR QUALITY STATUTORY LAWS: A COMPARISON OF 10 STATES" to assist committee members in examining various fee structures and rates adopted by other states. Additional research was done to examine the permit program budgets and staffing of these ten states for comparative purposes. Beginning in the summer of 1992, the agency initiated a "permit search project" by contacting some 8000 businesses and industries in Alaska to determine who would need permits under the expanded requirements of the Clean Air Act. This information served as part of the foundation in enabling the committee to develop language on permit fees.

#### **Substance of Discussion & Resolutions:**

**Evaluation of Alternative Concepts** - The fee concept contained in the draft bill represents a refinement of the first official fee proposal presented to the committee. Prior to this proposal, several alternative fee structures adopted by other states were discussed by the committee. While the first proposal was being refined by language changes, the agenda remained open to introduction of other alternative proposals. At meeting # 6, five other fee concepts were introduced and discussed. One of these alternatives could be viewed as a detailed proposal. The other four were intentionally brief in recognition of the desire to have a simplified fee concept that would minimize the department's administration costs for fee billing, collection and dispute resolution. Fee alternatives based on emission quantities were introduced for the purpose of providing a direct incentive to reduce emissions. The simplified fee proposals were made in-part with the intent to help keep overall fees lower. Another ancillary benefit to this approach would be to keep the text of the bill trim. The alternatives are enclosed. The majority of committee members found that these alternative fee proposals did not provide the specific

accountability or equity features that were accomplished by the then refined original fee proposal. However, a concept from one of the alternatives was molded into the final fee language.

**Permit Administration Fee -**

The language on permit administration fees is developed on the policy premise that a cost generator is to be a cost bearer. By setting this fee rate on a basis of dollars per hour of agency service provided, accountability for cost control within government and the regulated community will provide a strong motivation to foster program efficiency. For clarification, the "cost" to be funded is the costs incurred by the agency in reviewing, issuing and maintaining the permit. This "cost" is not in any manner intended to address any environmental impact cost of the emitted air pollutants. The language lists the specific tasks for which permit administration fees will be collected.

Several concerns were raised with respect to the fee structure. First, the increased administration burden of tracking hours spent on each permit would probably increase the overall program costs. Second, inequities among similar facilities could arise. Early permit applicants may bear greater fees relative to later applicants as agency personnel gain experience and improve efficiency. A facility that happens to be located further from an agency office could bear greater permit administration fees because of increased travel time and costs. Solutions to many of these were incorporated into the final language or as intent for the supporting regulations.

In certain respects, facilities regulated under general permits would be serviced in a collective effort with the associated permit administration fees being equitably shared. Specifically, the development costs of a general permit would be shared by those that would be issued that permit. Where the agency can perform a reduced level of effort on inspection and compliance tasks, the costs of the reduced or "representative" type inspection would be shared by the larger group who benefit from that approach in comparison to the costs of individual inspections at each facility.

To clarify the probable permit administration costs for certain normal or regular service tasks, the department will prepare estimated fee costs for various types and sizes of facilities. It is intended that these lists will be readily available for permittees and permit applicants. Such a listing would indicate the amount of retainer normally required when services are provided prior to the submittal of a permit application. The proposed language would allow persons to challenge unreasonable permit administration fees.

Regarding language in subsection (d), if the department were to secure contractual assistance for permit administration tasks, the contractual services would be billable to the applicant in the same manner as accomplished if the department staff performed those services.

### **Emission Fee -**

The purpose of the emission fee is to distribute the costs of performing those functions of the permit program that benefit or assist all permit holders through execution of a state permit program. These cost items include such things as program development and management, utilities, accounting and administration and the small business assistance program. If the fee rate is a function of the quantity of air pollutants emitted from a facility, larger facilities would carry larger portion of the burden. There was a concern that ADEC carefully consider what cost items are to be included in the emissions fee. Supporting regulations are to identify tasks that incur costs to the permit program.

There was a strong view by several committee members that there should be "caps" or reduced fee rates at both the high and low end of facility size relative to emission quantities. Other incentives such as reduced fees if pollution prevention actions are taken or higher rates for emissions of hazardous air pollutants were also discussed. Fee incentives to accomplish pollution prevention was strongly favored by the environmental community. As a compromise, the adopted language reflects that the committee could not determine equity at this time and therefore established a structure that initiates a two year emission fee rate incorporating no incentives or rate reductions with the provision that ADEC must evaluate parameters that can lead to fee equity and establish a new fee rate prior to year three that examines all factors including caps, incentives or reduced rates.

During the reconsideration of the fee language a representative of Unocal Chemicals Division spoke to the committee regarding their concern for the fee language. Essentially, Unocal highlighted that the flat fee rate would result in their company paying a much higher emission fee in comparison to other large facilities throughout the state. The reason was that emissions of ammonia gas, which is not a federally regulated air pollutant, would result in annual fees of tens of thousands of dollars more than other large facilities. The company did not object to paying emission fees for ammonia emissions, but due to the quantity of emissions involved, believed they would carry a disproportionately higher burden. Language was proposed and adopted to provide a cap on fees above 4000 tons per year if the contaminant is a chemical compound not regulated under the Clean Air Act (ammonia and hydrogen sulfide are the only compounds). Unocal indicated that this fee adjustment would be acceptable. This change in language was adopted as a separate amendment to the section and adopted unanimously under first consideration vote.

Upon reconsideration of the amendment to the fee language, opposition was voiced by the large electric utility group because this fee cap would result in an additional fee burden to all other emission fee payers. Although the increase would be relatively small, the position was that any additional burden resulting from one party obtaining a reduced assessment would be unacceptable. The small electric utility group, the oil & gas representative and several other members retained their support for the amendment.

Subsection (f) of this section creates a mechanism whereby permittees would not be paying for emissions that they either don't emit (within the margin of error for calculations) or do not reasonably anticipate being emitted. Further, it is expressly not the intent of the committee or the department to impose new operational restrictions upon owners and operators of air pollution generating equipment by adoption of this language on "assessable emissions". It is intended that a facility owner who exceeds his assessable emissions, but not his permit allowable emissions, would simply pay for the additional assessable emissions. For the converse, an action that resulted in dramatic reductions of assessable emissions would be eligible for a credit toward future assessable emissions. These issues would be fully addressed in the subsequently adopted regulations.

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#### **ISSUE # 4: THE DEDICATED FUND AND SPECIAL ACCOUNT**

**Overview:** The Clean Air Act requires that the air quality permit program be fully self-sustained from the collected permit fees. Further, the Act specifies that the permit fees can be used solely to fund the permit program. A dedicated fund is allowed under the Alaska Constitution, but only if such a fund is required as a condition of approval in implementing a federal program. This is such a case.

Language creating a special account was drafted to enable the department to earmark funds that may be collected from litigation or from other enforcement settlements involving the air quality laws. These monies would be accounted separately within the general fund. Such an account would create a mechanism for the department to request a re-appropriation of the monies back to the department for use in the air quality program.

#### **Substance of Discussions and Resolutions:**

The regulated community is strongly interested in being able to monitor the expenditures of monies deposited into the dedicated fund. There was discussion of an annual report being produced as a mechanism for all to provide input to the budget setting process and evaluate agency efficiency, accountability and expenditures. The report requirement would be addressed in regulation.

Language adopted elsewhere in the draft precludes local government air pollution programs from collecting permit fees. All fees would be collected by the state in cooperation with any local agency. Monies from the fund would then be passed back to local agencies to support the staffing and other reasonable expenditures of state approved local programs performing permit tasks.

It is important to note that funds deposited into the special account may be one of the likely sources to fund the expanded small business assistance program.

## ISSUE # 5 : PERMIT PROGRAM COMPONENTS

**Overview:** There are several sections of the draft bill which address features of the permit program. Each are addressed separately below. Overall there are a few sections which garnered considerable debate. It is also important to note that the committee, due to lack of time, was not able to address all of the individual subjects contained within the CS Work Draft desired to be contained in statute. The agenda was focused upon discussing and resolving features which must clearly be in statute to obtain federal approval of the permit program. This goal was accomplished. Those features of the permit program which must be part of a final complete permit program, yet are not essential statutory features, were incorporated into the section entitled Emission Control Permit Program Regulations. This referencing in statute will enable these elements to be addressed in regulation. None-the-Less, there is an expressed desire of many committee members to continue to convene in order to address some of the individual subjects for possible later incorporation into the legislative bill. Should ADEC find it advantageous to the legislative review, the committee would be willing to convene in order to discuss selected subjects.

### **Substance of Discussion and Resolutions:**

Section entitled **CLASSIFICATION OF FACILITIES OR SOURCES; REPORTING** - This section serves two purposes. First, it enables the language in the bill to be succinct by allowing certain facility types identified in federal law to be classified and listed in regulation rather than statute. Secondly, it enables the department to request information from any generator of air pollution in order to assess whether that activity potentially endangers public health or air resource standards.

Section entitled **PERMITS FOR CONSTRUCTION, MODIFICATION, OR OPERATION** - The section contains the basic authority to require construction and operating permits for subject facilities that have air pollution generating equipment. The focus of debate was subsection (e). This subsection describes under what conditions a source or facility may be exempted from the permit program. Under federal law there is a very small set of sources that may ever be considered for exemption. An example is residential wood stoves. The federal administrator has exempted wood stoves from the permit program, but each state must then follow through on the state level to exempt wood stoves. The substance of debate focused upon the issue of under what circumstances should the state continue to regulate a source under the permit program if the federal administrator has exempted the source.

The language in the draft bill reflects a compromise between mandating that the state exempt the source and providing an unencumbered option for the state to either exempt or regulate the source. The adopted language provides the ability to continue to regulate a source that is federally exempted but caveated with certain provisions. Under first consideration vote, this language was unanimously adopted. During reconsideration an

amendment to further refine the provision failed. This failed amendment proposed to replace "issue a similar determination unless" with "make a finding as to whether". This debate was the principal reason for the split vote on reconsideration.

To clarify, the words "other determination" in subsection (e) is intended to address situations where the Administrator may provide partial exemptions or other alternatives to being regulated by the permit program.

Section entitled **FACILITIES REQUIRING PERMITS** - The purpose of this section is to delineate which facilities need either construction permits or operating permits. To keep the text of this section brief, the section calls upon the authority of another section to enable classification or grouping of facility types that are either unique relative to the need to acquire a permit under state or federal law or must be subject to a specific type of review under federal law as part of the permit review.

Sources or facilities classified under the authority of **CLASSIFICATION OF FACILITIES OR SOURCES; REPORTING** would be so indicated in the department's regulations such that all sources or facilities required to obtain a permit would be clearly listed for the regulated community. Further, those regulations would indicate which subset of facilities would be required to go through the federally mandated prevention of significant deterioration (PSD) review.

Subsection (a)(3)(II) was an issue of debate with the committee. The purpose of this subsection was to give the department some flexibility if there was a need to regulate a source that presented a potential danger to health, but there was not an ambient air quality standard set for that air contaminant. Contaminants classified as hazardous air pollutants are such an example.

Section entitled **EMISSION CONTROL PERMIT PROGRAM REGULATIONS** - This section was only briefly discussed at meeting #8 (12/17) due to lack of time. This was the last meeting for introduction of new material. Several amendments were accomplished relative to the contents of the CS Work Draft. The principal reason for most of these amendments was to clearly identify subjects that must be addressed in regulation in order to make the permit program approvable by EPA. Committee members understand and support the purpose for the amendments in order to conclude the committee's current task of putting forward a complete bill within the fall season time limitations. However, there is an expressed concern that many of the members would desire to address some of the individual subjects now referenced in this section and have those subjects be individual sections of the proposed legislation.

Section entitled **ADMINISTRATIVE ACTIONS REGARDING PERMITS** - The language

in this section specifies the timeliness for permit decisions. During discussion, several committee members expressed a concern that the department needs to have the ability in emergencies to rapidly authorize the operation of an air pollution source in order to contain, prevent or abate a larger environmental or public health situation. This discussion resulted in the creation of the section entitled **AUTHORITY OF THE DEPARTMENT IN CASES OF EMERGENCY**.

Another item of discussion focused upon the need to be able to issue permits for temporary operations in a more expedient fashion than the 12 months indicated for operating permits.

**Section entitled AUTHORITY OF THE DEPARTMENT IN CASES OF EMERGENCY -** This section provides a mechanism for the Commissioner of ADEC to authorize the immediate operation of a source or facility either without a permit or in contravention with the terms of a permit when such actions are deemed necessary in an emergency situation.

**Section entitled GENERAL OPERATING PERMITS -** Many general or "master" permits will be developed, each tailored to fit a number of individual but similar equipment installations. Once developed, an individual general permit can be issued very quickly. Issuance of general permits is one of the key elements in enabling the revised permit program to be efficient. It is anticipated that many of the small facilities such as rural electric power plants will operate under the authority of a general permit.

Upon reconsideration, discussion focused upon whether general permits would provide inadequate opportunities for public comment. This subject was the reason for the split vote at reconsideration.

Specifically, a concern was expressed that parties interested or potentially effected by the installation of a particular new air pollution source may find that the public comment opportunity had long since past. This situation may arise because the comment period on general permits are conducted when the permit is first developed and not when it is individually issued. A potentially interested party may not necessarily be concerned about the operation of a source until they become aware that such source would be located within their immediate proximity. Since general permits, as a practice, are to be issued to small air pollution sources, many committee members were of the opinion that small facilities generally do not represent a potential danger to health and welfare. The language in the section entitled "Review of Permit Action" provides that a party who is aggrieved by the issuance of a general permit to an individual facility can, with certain qualifications, appeal the permit action (see Issue # 8). The department can take other actions or precautions to avoid or mitigate some of these possible problems. Enhancing public awareness of public comment opportunities for general permits would be of assistance. The department should evaluate which sources or facility types are to be eligible for general permits with consideration given to possibly precluding general permits

for facility types which may exhibit unexpected impacts or those that may have significant impacts within certain types of locales this would assist in avoiding potential problems.

Another somewhat associated point of discussion is that there may exist certain local conditions that would preclude the issuance of a specific general permit within a certain geographic locale due to unique conditions (such as nonattainment areas or areas where pollution levels are already high). In this situation, the department could develop an alternative and somewhat different general permit for the same facility type if it were to locate within a unique locale.

Section entitled **AIR POLLUTION FROM OUTER CONTINENTAL SHELF ACTIVITIES** - This section would provide the ability for the department to regulate mineral and oil & gas extraction activities located between the coast and 25 miles seaward. State authority is normally limited to that area within three miles of the coast. Section 328 of the Clean Air Act provides a mechanism to obtain delegation of federal authority and thereby extend the geographic range of authority for certain activities. The oil & gas community favors adoption of this language because they would prefer to receive all air permits from the department rather than some from the EPA (offshore) and some from ADEC (onshore).

Committee discussion also focused on whether federal provisions could be applied toward sources that are located between 25 and 200 miles offshore. Since there does not appear to be a clear indication or reference in the federal regulations for applicability of Section 328 for sources beyond 25 miles, the adopted language only addresses air pollution sources located between the coast and 25 miles offshore.

Committee discussion also addressed whether seafood processing facilities located offshore could be regulated by authority of this provision. The federal regulations adopted under Section 328 of the Act do not regulate seafood processing facilities. The seafood processing industry would desire to obtain parity between onshore and offshore facilities with respect to environmental regulation. It may be possible to regulate movable offshore seafood processors under existing state law if the facility is located within three miles of the coastline. This is currently under investigation by the Department of Law.

Section entitled **RESPONSIBILITIES OF OWNER AND OPERATOR** - The development of this section grew out of discussion on other sections of the bill; notably those describing who needs permits. Committee discussions focused upon the need for ADEC to be able to enforce upon a real entity in recognition of possible corporate maneuvers and also the concern of industry whereby owners of a property or facility may indeed not be knowledgeable or legally responsible for the day to day functioning of a facility which is under the control of a lessee or contractor.

## ISSUE # 6 : LOCAL AIR QUALITY CONTROL PROGRAMS

**Overview:** The following three sections address how local government air pollution control efforts work in conjunction with the department's efforts and programs. These sections address the full range of air quality management programs such as motor vehicle emission controls, open burning activities, activities directed toward compliance with public health air quality standards and the stationary source permit program. The language in these sections would replace existing statutes AS 46.03.210, AS 46.03.220, and AS 46.03.230.

### **Substance of Discussion and Resolutions:**

Section entitled **LOCAL AIR QUALITY CONTROL PROGRAMS** - This section establishes that local programs are approved by the department through a cooperative agreement which delineates the responsibilities of both agencies. Committee members were concerned that in many cases local governments are not in a position to maintain either a competent or efficient permit program because of the limited number of air sources within their jurisdiction and the difficulty of obtaining adequately skilled staff in this area of expertise. There is a high demand and expectation for efficiency because this permit program is user funded and also requires a central core of staff with a specialized expertise. The adopted language places the responsibility upon the department to make appropriate judgements regarding when local governments can best accomplish the permit program requirements while also being efficient and competent. However, the participants of the program (permittees and others) will have opportunities to provide comment to ADEC in these matters. It was the committee's concern that the costs of inefficient local programs would be unduly born by the entire community of permit holders.

Another concern was the possibility of local programs to use authority provided under local ordinances to accomplish non-air objectives, such as land use objectives. Consequently, the language in subsection (f) somewhat restricts the ability of local governments to set requirements that may be more restrictive than state regulations. This restrictive language would only apply to activities associated with the stationary source permit program. Supporting regulations would exemplify the criteria of subsection (f). It is specifically intended not to include such things as open burn approvals or automotive emission requirements. This compromise language was opposed by two members at the time of reconsideration vote.

Language in subsection (h) was created to avoid a potential equity problem if local government programs were to collect permit fees. This language precludes local governments from collecting air permit fees. All fees would be collected by the state with financial assistance provided from the state to the local program for execution of the permit program. This language would also prevent local governments from initiating a permit program solely as a revenue source or job generator.

Section entitled **INADEQUACY OF LOCAL PROGRAMS** - This section specifies the process for identifying and rectifying deficiencies in executing the terms of the interagency cooperative agreement. There was relatively little debate concerning the provisions of this section.

Section entitled **STATE AND FEDERAL AID** - The language in this section is the principal authority for local programs to receive air permit funds collected by the state to support the staff and other expenditures of executing a permit program at the local level. Changes were made relative to CS Work Draft and relative to existing AS 46.03.230 to provide for local programs to receive federal funds without approval of the department. In the case of Clean Air Act Section 105 grant funds, EPA as part of the State-EPA Agreement will request state review of grant applications submitted by the local government programs. The section 105 federal grants are the main, but not sole source of federal funds for executing state and local air programs.

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### **ISSUE # 7 : CRIMINAL PENALTIES FOR AIR POLLUTION**

**Overview:** The committee discussed the criminal penalty provisions at some length during three meetings or more. This language would create a new section applicable to criminal penalties for violation of air pollution laws. At the beginning of discussion, the committee first considered a proposal to amend existing AS 46.03.790. Several desired options only became available to the committee if a new stand alone section applicable to air quality was created. The minimum changes required in Alaska statute to comply with the Act is the substance of what is now contained in subsections (a)(2) and (h).

The draft language reflects an overall concern by the committee that statutory provisions be explicit to match the severity of a penalty with the damage caused by a criminal action and the state of mind of the person performing the crime. To achieve this goal, the committee looked to the framework of language that exists in Section 113 of the Clean Air Act which specifies penalty gradations that are used in federal court if EPA is taking the enforcement action aided by the U.S. Department of Justice.

Following this framework, the penalties of a Class A misdemeanor were linked with a criminal negligence state of mind when an action is performed that does not impair life or cause serious bodily injury. Potential penalties of a Class C felony were linked with a reckless state of mind when the action places a person in imminent danger of death or serious bodily injury. Potential penalties of a Class A felony were linked with a knowing state of mind when the person knows that he places another in imminent danger of death or serious bodily injury.

As a further aid to the committee, the assistant attorney general informed the committee

that existing law contains other provisions on criminal sanctions that can be used in cases where air pollution incidents have caused harm to individuals or property. The committee recognizes that these other provisions are available to enforcement officers.

To aid the reader, the following table lists the maximum penalties for the identified offenses.

#### POTENTIAL MAXIMUM CRIMINAL PENALTIES

<u>CRIME</u>	<u>FOR INDIVIDUALS</u>		<u>FOR ORGANIZATIONS</u>	
	<u>FINE (\$)</u>	<u>JAIL TERM</u>	<u>FINE (\$)</u>	<u>JAIL TIME</u>
Class A Misdemeanor	5,000	1 yr.	200,000	1 yr.
Class C Felony	50,000	5 yrs.	500,000 <sup>1</sup>	5 yrs.
Class B Felony	50,000	10 yrs.	500,000 <sup>1</sup>	10 yrs.
Class A Felony	50,000	20 yrs.	500,000 <sup>1</sup>	20 yrs.

1. \$ 500,000 or twice damages caused.

#### **Substance of Discussion and Resolution:**

There was a lengthy discussion on the certified notice concept of (a)(1). This concept grew from the idea that several committee members believed it to be very important that operators of air pollution generating equipment be fully informed that they could be subject to criminal sanctions for certain actions regarding that equipment. Since criminal sanctions are viewed as quite serious, the committee was concerned that an overt action should be taken to assure that operators become knowledgeable through a communication that may be viewed as equivalent to a warning. It is the committee's intent that the certified notice would be executed prior to authorized operation of the facility, not after a criminal action could possibly occur. One member believed strongly that the certified notice element should be deleted because it unnecessarily increases requirements for ADEC and the regulated community, and creates considerable ambiguity over who has received notice and whether a regulated company has issued proper notice to all of its employees. Immediately prior to first consideration vote, a motion was made to delete the certified notice concept. The motion failed in a split vote of 4 favoring the deletion, 3 opposed and one abstaining.

The committee was concerned that minor, technical, and immaterial violations of the statute not expose persons to criminal prosecution. As a result, the committee's proposed language requires certain violations to rise to the level of "materiality".

Several committee members expressed that they were not knowledgeable in the area of criminal law. At least one member and perhaps others felt that the committee should not propose any language other than that which is required for EPA to approve the state's program.

There was some concern by committee members that the potential maximum fine for a misdemeanor described in subsection (a) does not comport with what EPA interprets the law to be. Upon review of both federal statute and supporting regulation, the assistant attorney general's counsel on this subject indicated that the language of this subsection is in compliance with both the Act and the federal regulation.

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### **ISSUE # 8: PUBLIC INVOLVEMENT IN PERMITS**

**Overview:** The public and other interested parties can raise their objection on a permit action to either the department or the U.S. Environmental Protection Agency (EPA). However, for most situations, the opportunity to continue to contest a permit action is predicated on having raised the issue of concern during the public comment period for the permit. The Clean Air Act requires that the state provide an opportunity for an aggrieved party to carry their objection to court. The Act also requires that EPA has an opportunity to review each permit prior to issuance and that EPA may object to and prevent the issuance of a permit that does not meet all applicable requirements of federal law. Two sections in the draft bill are crafted to address these federal requirements. There is additional discussion within ISSUE #6 of this document pertaining to the section entitled GENERAL OPERATING PERMITS which addresses concerns about public participation in the development and issuance of these permits.

The department's previously adopted Administrative Procedures in 18 AAC 15 provides administrative appeal through an adjudicatory hearing as a mechanism to object to permit actions. The administrative appeal is more responsive and a less expensive alternative to judicial review. Under current state law, judicial review is currently available for any party with "standing" under state law.

Under existing Alaska law the term "standing" has a broader interpretation than its counterpart in federal law. This avails the judicial process to a larger spectrum of potentially aggrieved parties in the state appeal process.

There was substantial debate among committee members regarding the opportunities for an aggrieved party to request an adjudicatory hearing and obtain judicial review of a