

ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672

8334 SENATE JUDICIARY

1. 1. 1.

HB

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. HB 144

Revision Date: _____ Dept. Affected: Revenue
 Title: An Act relating to fees for certain costs of administering the BRU: Permanent Fund Dividend
permanent fund dividend program. Component: Permanent Fund Dividend
 Sponsor: House Finance Committee
 Requestor: House Finance Committee COMPONENT SERIAL NO. 981

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY94	FY95	FY96	FY97	FY98	FY99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE FUND SOURCE:	60.0	60.0	60.0	60.0	60.0	60.0

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

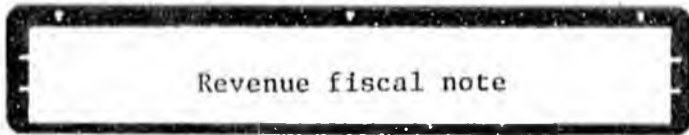
Estimate of current year (FY93) impact: \$ -0-

ANALYSIS: (Attach a separate page if necessary)

See Attached.

Prepared by: Thomas C. Williams *Thomas C. Williams* Phone: 465-2323
 Division: Permanent Fund Dividend Date: 02-17-93
 Approved by Commissioner: [Signature] Date: 2/17/93
 Agency: Department of Revenue

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ALASKA DEPARTMENT OF REVENUE
PERMANENT FUND DIVIDEND DIVISION

ANALYSIS OF HB 144

As of February 17, 1993

Expenditures

The only costs to implement this legislation would relate to the required regulation notice and adoption procedures plus a limited amount of data processing programming.

If the required regulations were advertised in conjunction with other pending regulation amendments, additional costs of this legislation would not be significant.

Revenues

The revenues generated by the adoption of a processing fee would be deposited *into the dividend fund*, offsetting the costs of processing attachments.

ALASKA DEPARTMENT OF REVENUE
 PERMANENT FUND DIVIDEND DIVISION
1989 - 1992 PFD ATTACHMENT & ASSIGNMENT ACTIVITY

As of January 25, 1993

<u>PFD Year Services Held (A)</u>	<u>4 Year Total</u>	<u>1992</u>	<u>1991</u>	<u>1990</u>	<u>1989</u>
<u>Attachments (B)</u>					
IRS (Federal Taxes) (C)	48,877	18,166	12,413	11,548	6,750
Non-municipal Writs served by					
Process Servers (Judgements) (C)	30,114	9,374	8,218	6,462	6,060
ACPE (Student Loan Delinquencies)	26,678	8,575	7,282	5,997	4,824
CSED (Child Support Delinquencies)	29,118	7,892	7,571	7,112	6,543
Municipal Writs (Fines & Taxes)	5,644	1,200	1,224	1,323	1,897
PFDD (Repayment of Dividends)	2,513	721	760	549	483
Certified Services (Judgements) (C)	565	565	(D)	(D)	(D)
DOL (Employment Taxes)	577	139	121	127	190
IEAD (State Taxes)	191	20	34	52	85
Court Orders (Judgements)	27	5	1	20	1
<u>Total Attachments</u>	144,304	46,657	37,624	33,190	26,833
<u>Assignments (E)</u>	15,960	4,628	3,753	4,502	3,077
<u>Total PFD Year Services Held</u>	<u>160,264</u>	<u>51,285</u>	<u>41,377</u>	<u>37,692</u>	<u>29,910</u>

Notes

(A) The figures reported for 1989-1991 are for the period April 1 through March 31 of the year indicated. The 1992 figures are for the period April 1, 1992 through December 31, 1992.

(B) The attachment figures represent the number of attachments that actually were held. Some of the attachments received are returned because they are for an individual who is not on file. Others correspond to individuals who are on file but are released by the individual or agency filing the attachment before the department makes payment. The figures reported correspond to unreleased attachments held during the periods indicated.

Not all these attachments received funds. For example, an individual may have been attached by both CSED and the IRS. If the CSED attachment equaled or exceeded the amount of the dividend, CSED would receive the entire dividend, and IRS would receive nothing. However, the statistics would still reflect 2 attachments.

(C) Until December 30, 1990 the exemption from attachment for these items was 50%. Effective January 1, 1991 the exemption from attachment for these items was reduced to 45% by § 3, Ch 198, SLA 1990.

(D) Certified services were only available starting in 1992 as a result of amendments to AS 43.23.065 enacted by Ch 52, SLA 92.

(E) Since 1989 assignments can only be made to governmental agencies or a court.

ALASKA DEPARTMENT OF REVENUE
 PERMANENT FUND DIVIDEND DIVISION
1989 - 1992 PFD ATTACHMENT & ASSIGNMENT ACTIVITY

As of January 25, 1993

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ELECTIVE DISTRICT 14
ELMENDORF A.F.B.
EAST ANCHORAGE
GOVERNMENT HILL

REP. TERRY MARTIN

HOME
355 DONNA DR., #11
ANCHORAGE, AK 99504
PHONE: 333-6990

DURING SESSION
P.O. BOX V
STATE CAPITOL BUILDING
JUNEAU, AK 99811
PHONE: 465-3783

Alaska House of Representatives

MEMORANDUM

TO: House Finance Committee

FROM: Representative Terry Martin *T.M.*

DATE: February 16, 1993

SUBJECT: House Bill 144,

An Act relating to fees for certain costs of administering
the permanent fund dividend program.

This bill is designed to transfer the costs of administering permanent fund dividend assignments and attachments back to the person whose financial obligations are the cause of the assignment or attachment.

As you know, the amount of every Alaskan's permanent fund dividend is affected by the cost of operating the Permanent Fund Dividend Division. The attached table shows that the Division processed over 51,000 attachments and assignments in 1992.

If we pass HB 144, the cost of processing the attachment or assignment will be paid by the obligor instead of being absorbed by the Division as a cost of doing business. The net effect of this bill will be that every Alaskan's dividend will be increased, albeit by a small amount; and those Alaskans whose financial practices cause their dividends to be attached or assigned will pay a fee for the cost of the extra handling and processing of their PFDs.

SPONSOR STATEMENT

HB

151

IN THE DISTRICT/SUPERIOR COURT FOR THE STATE OF ALASKA
AT _____

() STATE OF ALASKA)
 ())
)
 Plaintiff,)
)
 vs.)
)
 Defendant.)

CASE NO. _____ CR
 REQUEST FOR APPOINTED COUNSEL

I wish to have a lawyer and cannot afford to pay for one. I request that the court appoint a lawyer to represent me.

STATEMENT OF FINANCIAL RESPONSIBILITY

I understand that if the court decides I am able to pay for part of the costs of my defense (lawyer's services and other costs), the court may order me to pay for these items.

FINANCIAL STATEMENT

Name _____ Phone _____
 Address _____ Date of Birth _____
 _____ Soc. Sec. No. _____

Present employer _____
 (If not now employed, state last employer and date terminated.)

Employer _____
 Address _____ Phone _____

Member of Union yes no Which One? _____

I. DEPENDENTS	Name	Age	Relationship
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

II. INCOME INFORMATION (after taxes, but before other deductions)	Yourself	Your Spouse
a. Current Monthly Income	_____	_____
b. Income during last 12 months:	_____	_____
Wages	_____	_____
Public Assistance	_____	_____
Unemployment	_____	_____
Other _____	_____	_____
(specify)	_____	_____
TOTAL YEARLY INCOME	_____	_____

III. FAMILY ASSETS - Present Value

Cash on hand or in bank _____
 Land, buildings, or trailers _____
 Motor vehicles _____
 Securities: stocks, bonds, notes _____
 Businesses _____
 Snow machines, boats, airplanes _____

TOTAL ASSETS _____

IV. FAMILY DEBTS

Mortgages _____
 Loans _____
 IRS _____
 Child support arrearages _____
 Others (charge cards, bills, etc.) _____

TOTAL DEBT _____

V. MONTHLY EXPENSES

Food _____
 Rent _____
 Utilities _____
 Car payments _____
 Furniture & TV payments _____
 Child support or alimony _____
 Mortgages _____
 Loans _____
 IRS back taxes _____
 Others (charge card, bills, etc.) _____

TOTAL EXPENSES: _____

GENERAL WAIVER

I authorize anyone, including my past employers, to release to the Alaska Court System all information concerning any income source I have had for a period of three years immediately preceding my first court appearance in which an appointed lawyer is representing me.

OATH

I declare, under oath, that I have read or have had read to me the state of Financial Responsibility on page one and the above General Waiver, and I understand them. I further declare, under oath, that the above Financial Statement is true.

I understand that this Financial Statement may be made available to the Attorney General after the conclusion of this case, and that if I give false information in this statement, the false information may be used to prosecute me for perjury under Alaska Statute 11.56.200.

_____ Date

_____ Defendant's Signature

Subscribed and sworn to or affirmed before me on _____, 19 _____,
 at _____, Alaska.

(SEAL)

 Clerk of Court, Notary Public or other person
 authorized to administer Oaths.
 My commission expires: _____

IN THE DISTRICT/SUPERIOR COURT FOR THE STATE OF ALASKA
AT _____

() STATE OF ALASKA,)
())
Plaintiff,)
vs.)
Defendant.)
DOB: _____)

CASE NO. _____ CR

JUDGMENT FOR COST OF APPOINTED COUNSEL

IT IS ORDERED that defendant pay to plaintiff \$_____ for the cost of appointed counsel. This judgment shall accrue interest at the annual rate of 10.5 % from the date of judgment until paid. Payment shall be made directly to the plaintiff at the address indicated at the bottom of this form and not to the court.

If defendant refused or failed to execute the assignment of defendant's Alaska Permanent Fund dividend as ordered by the court, the clerk of court or the clerk's designee is ordered to execute the assignment pursuant to Criminal Rule 39 and Civil Rule 70.

Defendant is ordered to apply for Alaska Permanent Fund dividends every year in which defendant is an Alaska resident eligible for a dividend until the judgment is paid in full. If defendant fails to apply, defendant may be held in contempt of court. Criminal Rule 39(c)(2)(D).

This judgment has the same force and effect as a judgment in a civil action.

- Enforcement may begin three years after defendant is released from incarceration.
- The court finds good cause not to delay enforcement of this judgment because the defendant is not being incarcerated or is being incarcerated for a period of time that should not affect defendant's ability to pay the judgment.
- _____
- This judgment may be enforced at any time because it is entered under Criminal Rule 39(e).

After this judgment is collected, the plaintiff shall file a satisfaction of judgment.

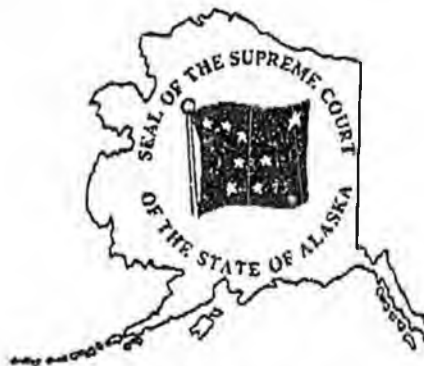
Effective Date
(at least 10 days after date of Notice)

Judge
Type or Print Judge's Name

I certify that on _____
a copy of this judgment was sent to:
Defendant

- AC's Collections Unit, 1031 W 4th Ave, Suite 200, Anchorage, AK 99501. Phone: 269-5205
- Collections Office, _____
(address) (city) (state) (ZIP) (phone)

Clerk _____



Alaska Court System
State of Alaska
OFFICE OF ADMINISTRATIVE DIRECTOR

CHARLES S. CHRISTENSEN III
Staff Counsel

303 K Street
Anchorage, AK 99501
(907) 264-8228

April 1, 1993

The Honorable Robin Taylor
Chairman, Senate Judiciary Committee
P. O. Box V
Juneau, Alaska 99811

Dear Senator Taylor:

I am writing to request that the Judiciary Committee schedule House Bill 151, relating to payments by indigent persons for legal services and related costs. This bill was introduced by the House Judiciary Committee at the request of the Alaska Supreme Court.

Under both the United States and Alaska Constitutions, a criminal defendant has the right to an attorney. If he cannot afford an attorney, the state must appoint one to represent him. In Alaska, defense services for indigents are generally provided by the Public Defender or the Office of Public Advocacy.

Until 1990, AS 18.85.120(c) authorized a court to order a defendant to pay for defense services, to the extent that the defendant could afford to pay. For a variety of reasons, this statute was ineffective in obtaining repayment of defense costs from indigent defendants. These reasons included the difficulty and expense of enforcing this type of repayment order, and the fact that the statute related to a defendant's current ability to pay, ignoring his future ability. This was very restrictive when compared to the system used in many other states, which allow a court to order repayment from a defendant's future earnings.

In 1990, at the request of the judicial branch, the legislature amended AS 18.85.120(c) to allow civil judgments to be entered against defendants who are represented by the public defender or OPA without considering the defendants' current ability to pay. If a defendant became solvent at a future date, the judgment could be enforced; if not, the judgment could not be enforced. This change ensured that indigent defendants would

The Honorable Robin Taylor
April 1, 1993
Page 2

receive counsel, but that they would repay some of the costs of that representation if they were no longer indigent at some later date. However, one major problem with this revision was that it allowed a three-year moratorium on repayment to follow a defendant's release from incarceration.

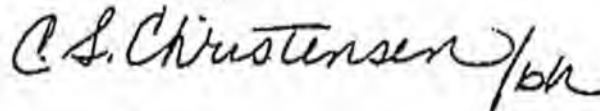
CSHB 151 (FIN) proposes several changes to AS 18.85.120(c). First, it would eliminate the three-year moratorium on repayment that follows incarceration. This moratorium makes it substantially more difficult for the state to recover defense costs in a timely manner, it imposes a significant administrative burden on the Department of Law, and the policy behind it is questionable. There is no reason, for example, to grant a grace period to a person who is sentenced to 72 hours in jail for a DWI; that person does not need three years to get back on his feet. Even in the case of defendants incarcerated for longer terms, the three-year period is an arbitrary length of time. Many persons will have substantial income soon after leaving prison, and virtually all will receive permanent fund dividend checks during the three-year period. Additionally, many persons leave the state by the third year following their release from incarceration, and then there is no hope of ever recovering defense costs.

Second, CSHB 151 (FIN) codifies language currently contained in Criminal Rule 39. This language is intended to ensure that the repayment requirement is imposed in a fair manner. It includes a provision which allows a court to stay enforcement of a repayment judgment during the pendency of a defendant's appeal; a provision which allows a person subject to a repayment judgment to petition the court at any time to remit, reduce or defer the unpaid portion of the judgment upon a showing of financial hardship; and a provision which allows a court to remit or reduce the balance owing on the judgment or change the method of payment if the payment would impose manifest hardship on the person or the person's immediate family.

Like all judgment debtors, a person subject to a repayment order would have a certain amount of property and income automatically protected from seizure by the Alaska Exemptions Act (AS 09.38). This act ensures that low-income debtors are protected from the unreasonable demands of creditors. A defendant's income, including the permanent fund dividend, could also be protected under the "manifest hardship" procedure discussed above.

Thank you for your courtesy. Please let me know if I can provide any additional information.

Very truly yours,



C. S. Christensen III
Staff Counsel

NATE COMMITTEE REPORT

DATE: 3/31/93

FURTHER: FINANCE

DATE TURNED INTO OFFICE: 12 April 1993

JUDICIARY Committee considered CS FOR HOUSE BILL NO. 151(FIN)

"An Act relating to payment by indigent persons for services of representation and court costs; providing for stays of enforcement of a judgment during the pendency of an appeal of a conviction; allowing petitions for remission, reduction, or deferral of judgment; permitting a court to remit or reduce a judgment or to change the method of payment; and providing for an effective date."

and recommends:

- replace with _____ CS _____ (_____)
- or adopt previous _____ CS _____ (_____)
- attaches amendment(s)

- same title
- new title
- technical title change (HB only)

adopts _____ Letter of Intent

further referral to the _____

do pass

do not pass

no recommendation

individual recommendations

NEW FISCAL NOTES

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTES

Department	Date	Zero	Fiscal
Public Defender	3-4-93	✓	
Public Advocacy	3-22-93	✓	
LAW	3-8-93		✓
Trial Courts	2-18-93	✓	

Appropriation No Fiscal Note

DO PASS:

Rich Halford

OTHER RECOMMENDATIONS:

George T. ... No Rec.

Suzanne Klette No Rec

Adrian L. Taylor Do Pass
 Chair: Signature and Recommendation

proceedings if the trial judge finds that the defendant's rights would be prejudiced by use of the system.

(c) Facsimile telecopy orders issued in proceedings conducted under this rule are acceptable as originals for the purposes of release or detention by correctional officers.

(d) Nothing in this rule diminishes any other existing right of a criminal defendant.

(Added by SCO 719 effective August 1, 1986; amended by SCO 863 effective July 15, 1988).

Rule 39. Appointment of Counsel.

(a) **Informing Defendant of Right to Counsel.** The court shall advise a defendant who appears without counsel for arraignment, change of plea, or trial of the right to be represented by counsel, and ask if defendant desires the aid of counsel. The court shall not allow a defendant to proceed without an attorney unless the defendant understands the benefits of counsel and knowingly waives the right to counsel.

(b) **Appointment of Counsel for Persons Financially Unable to Employ Counsel.**

(1) If defendant desires the aid of counsel but claims a financial inability to employ counsel, the court or its designee shall determine whether defendant is an "indigent person," as defined by statute, by placing defendant under oath and asking about defendant's financial status, or by requiring defendant to complete a signed sworn financial statement. The court shall order defendant to execute a general waiver authorizing release of income information to the court. The court may require defendant to attempt to arrange private representation before the court makes a final determination on indigency.

(2) Before the court appoints counsel for an indigent defendant at public expense, the court shall advise defendant that defendant will be ordered to repay the prosecuting authority for the cost of appointed counsel, in accordance with paragraph (d) of this rule, if the defendant is convicted of an offense. The court shall order defendant to execute assignments of defendant's permanent fund dividends to the prosecuting authority for a sufficient number of years to ensure that the maximum judgment that may be entered against the defendant under the schedules in paragraph (d) is paid in full. If defendant refuses to execute the assignments, the court shall direct the clerk to execute the assignments pursuant Civil Rule 70. The court may enter such orders as appear reasonably necessary to prevent defendant from dissipating assets to avoid payment of the judgment.

(3) If the court or its designee determines that the defendant is an "indigent person," the court shall appoint counsel pursuant to Administrative Rule 12 and notify counsel of the appointment.

(4) In the absence of a request by a defendant otherwise entitled to appointment of counsel, the court shall appoint counsel unless the court finds that the defendant understands the benefits of counsel and knowingly waives the right to counsel.

(5) If the trial court denies defendant's request for appointed counsel, defendant may request review of this decision by the presiding judge of the judicial district by filing a motion with the trial court within three days after the date of notice, as defined in the Criminal Rule 32.3(c), of the denial. The trial court shall forward the motion, relevant materials from the court file, and a cassette tape of any relevant proceedings to the presiding judge. The presiding judge or his or her designee shall issue a decision within three days of receipt of these materials.

(c) **Costs of Appointed Counsel.**

(1) *Entry of Judgment.*

(A) Upon conviction of an offense, revocation of probation, denial of a motion to withdraw plea, and denial of a motion brought under Criminal Rule 35.1, the court shall prepare a notice of intent to enter judgment for the cost of appointed counsel in accordance with paragraph (d) of this rule, provide a copy of the notice to defendant, and order defendant to

(i) execute assignments of defendant's permanent fund dividends to the prosecuting attorney for a sufficient number of years to ensure that the judgment is paid in full; and

(ii) apply for permanent fund dividends every year in which the defendant qualifies for a dividend until the judgment is paid in full.

If defendant refuses to execute assignments of defendant's permanent fund dividends, the court shall direct the clerk to execute assignments pursuant to Civil Rule 70.

(B) Defendant may oppose entry of judgment by filing a written opposition within 10 days after the date of notice, as defined in Criminal Rule 32.3(c), of the court's intent to enter judgment. The opposition shall specifically set out the grounds for opposing entry of judgment. The prosecuting authority may oppose the amount of the judgment by filing a written opposition within the same deadline.

(C) If no opposition is filed within the time specified in section 39(c)(1)(B), the clerk shall enter judgment against defendant for the amount shown in the notice. If a timely opposition is filed, the court may set the matter for a hearing and shall have authority to enter the judgment.

(D) The judgment must be in writing. A copy of the judgment shall be mailed to defendant's address of record. The judgment shall bear interest at the rate specified in AS 09.30.070(a) from the date judgment is entered.

(2) *Collection.*

(A) The judgment has the same force and effect as a judgment in a civil action in favor of the prosecuting authority and is subject to execution, except that no action may be taken to enforce the judgment for three years after the defendant is released from incarceration unless, for good cause shown, the court considers it appropriate to enforce the judgment earlier.

(B) All proceedings to enforce the judgment shall be in accordance with the statutes and court rules applicable to civil judgments. The judgment is not enforceable by contempt. Payment of the judgment may not be made a condition of a defendant's probation. Default or failure to pay the judgment may not affect or reduce the rendering of services on appeal or any other phase of a defendant's case in any way. A defendant does not have a right to be represented by appointed counsel in connection with proceedings under subparagraph 39(c) or any proceedings to collect the judgment.

(C) Upon showing of financial hardship, the court shall allow a defendant subject to a judgment under this rule to make payments under a repayment schedule. A defendant may petition the court at any time for remission, reduction or deferral of the unpaid portion of the judgment. The court may remit or reduce the balance owing on the judgment or change the method of payment if the payment would impose manifest hardship on the defendant or defendant's immediate family.

(D) Notwithstanding section 39(c)(2)(B), a defendant may be held in contempt for failing to comply with an order under this rule to apply for a permanent fund dividend.

(3) *Appeal.*

(A) If defendant appeals the conviction, enforcement of the judgment may be stayed by the trial court or the appellate court upon such terms as the court deems proper.

(B) If defendant's conviction is reversed, the clerk shall vacate the judgment and order the prosecuting authority to repay all sums paid in satisfaction of the judgment, plus interest at the rate specified in AS 09.30.070(a).

(d) *Schedule of Costs.* The following schedules govern the assessment of costs of appointed counsel under paragraph 39(c). If a defendant is convicted of more than one offense in a single dispositive court proceeding, costs shall be based on the most serious

offense of which the defendant is convicted. If a defendant is otherwise convicted of more than one offense, costs shall be separately assessed for each conviction. For good cause shown, the court may waive the schedule of costs and assess fees up to the actual cost of appointed counsel, including actual expenses.

Misdemeanors

Trial	\$500.00
Change of plea	200.00
Post-conviction relief or contested probation revocation proceedings in the trial court	250.00

Felonies

	Class B & C	Class A and Unclassified (Except (Murder)	Murder in the 1st and 2nd Degrees
Trial	\$1,500.00	\$2,500.00	\$5,000.00
Change of plea after substantive motion work and hearing and before trial commences	1,000.00	1,500.00	2,500.00
Change of plea post-indictment but prior to substantive motion work and hearing	500.00	1,000.00	2,000.00
Change of plea prior to indictment	250.00	500.00	750.00
Post-conviction relief or probation revocation proceeding in trial court	250.00	500.00	750.00

(e) **Review of Defendant's Financial Condition.**

(1) The court may review defendant's financial status at any time after appointment of counsel to determine (A) whether defendant continues to be an "indigent person," as defined by statute; or (B) whether defendant was an indigent person at the time counsel was appointed.

defendant is convicted. If a defendant is convicted of more than one offense, the court may assess fees up to the amount shown, the court may assess fees up to the amount shown, the court may assess fees up to the amount shown, including actual

500.00
200.00

250.00

Classified by 1st and 2nd Degrees

0.00 55,000.00

0.00 2,500.00

1.00 2,000.00

1.00 750.00

0.00 750.00

Financial Condition

defendant's financial condition continues to be an indigent person at the time

(2) If the court determines that defendant is no longer an indigent person, the court may

- (A) terminate the appointment; or
- (B) continue the appointment and, at the conclusion of the criminal proceedings against defendant in the trial court, enter judgment against the defendant for the actual cost of appointed counsel, including actual expenses, from the date of the change in the defendant's financial status through the conclusion of the trial court proceedings.

(3) If the court determines that defendant was not an indigent person at the time counsel was appointed, the court may

(A) terminate the appointment and enter judgment against defendant for the actual costs of appointed counsel, including actual expenses, from the date of appointment through the date of termination; or

(B) continue the appointment; and, at the conclusion of the criminal proceedings against defendant in the trial court, enter judgment against defendant for the actual cost of appointed counsel from the date of the appointment through the conclusion of the trial court proceedings.

(4) A defendant may request review of the court's decision to terminate the appointment according to the procedure set out in subparagraph 39(b)(5).

(5) Judgment may be entered against a defendant under this paragraph regardless of whether the defendant is convicted of an offense.

(6) Action may be taken at any time to enforce a judgment entered under this paragraph.

(Adopted by SCO 4 October 4, 1959; amended by SCO 90 Effective July 24, 1967; by SCO 157 effective February 15, 1973; by Amendment No. 4 to SCO 157 dated March 12, 1973; by SCO 187 effective July 2, 1974; by SCO 328 effective January 1, 1979; by SCO 448 effective November 24 1980; by SCO 677 effective June 15, 1986; and by SCO 888 effective July 15, 1988; rescinded and re-promulgated by SCO 1088 effective July 1, 1992)

Annotations

Cases

- I. Right to Counsel
 - A. In General
 - B. Indigents
- II. Waiver of Right to Counsel
- III. Effective Assistance of Counsel

I. Right to Counsel

A. In General

A defendant in a criminal proceeding has a constitutional right to court appointed counsel at a preliminary hearing only when the preliminary hearing is in the nature of a critical stage of the proceedings. *Merrill v. State*, Op. No. 392, 423 P2d 686 (Alaska 1967).

Where the court over defendant's explicit protest, dismisses counsel from a public defender agency on the belief that the agency has exhibited a lack of preparation and then appoints unwanted counsel to represent the defendant, the court deprives the defendant of his right to counsel of his choice. *McKinnon v. State*, Op. No. 1075, 526 P2d 18 (Alaska 1974).

Where a defendant has been denied the right to be represented by his chosen counsel, the subsequent entry of a plea of guilty or nolo contendere does not shield a conviction from challenge on appeal, since the voluntariness and reliability of such a plea is inherently suspect. *McKinnon v. State*, Op. No. 1075, 526 P2d 18 (Alaska 1974).

The advice given to a nonindigent defendant concerning the right to counsel must include at least a brief explanation of the benefits of counsel. *Swensen v. Municipality of Anchorage*, Op. No. 2179, 616 P2d 874 (Alaska 1980).

It is within the court's discretion to allow both defendant and counsel to participate actively in the trial, so that a defendant may represent himself and also have the assistance of counsel. *Cano v. Municipality of Anchorage*, Op. No. 20, 627 P2d 660 (Alaska 1980).

B. Indigents

Even when read in relation to recent United States Supreme Court decisions, AS 12.25.150(b) does not require the appointment of counsel for an indigent immediately after his arrest. *Martinez v. State*, Op. No. 389, 423 P2d 700 (Alaska 1967).

Mere speculation as to what might have been done by a defense counsel during an interval between arrest and appearance for arraignment when counsel was assigned cannot be a basis for inferring that indigent defendant in a criminal case was deprived of counsel during a critical stage of the proceedings. *Martinez v. State*, Op. No. 389, 423 P2d 700 (Alaska 1967).

Where the direct penalty for conviction of an offense may be incarceration, loss of a valuable license, or a fine heavy enough to indicate criminality, such offense is a "serious crime" within the public defender statute. A defendant who is charged with any such misdemeanor and who cannot afford to hire his own lawyer is eligible for representation by a public defender. *Alexander v. City of Anchorage*, Op. No. 738, 410 P2d 910 (Alaska 1971).

A indigent defendant is not entitled to representation by any particular attorney. *McKinnon v. State*, Op. No. 1075, 526 P2d 18 (Alaska 1974).

Once counsel is appointed to represent an indigent defendant, the parties enter into an attorney-client relationship which is no less inviolable than if counsel had been retained. *McKinnon v. State*, Op. No. 1075, 526 P2d 18 (Alaska 1974).

II. Waiver of Right to Counsel

To be valid, a waiver of the right to counsel must be made with an apprehension of the nature of the charges, the offenses included within them, the range of punishments, possible

defenses, mitigating circumstances and all other facts essential to a broad understanding of the whole matter. *Gregory v. State*, Op. No. 1269, 550 P2d 374 (Alaska 1976).

Magistrate must ascertain whether defendant understands benefits of counsel by recorded colloquy with defendant before right to counsel may be waived. *Gregory v. State*, Op. No. 1269, 550 P2d 374 (Alaska 1976).

When defendant is unable to make an intelligent choice as to waiver of right to counsel it is the duty of the court to assign counsel. *Gregory v. State*, Op. No. 1269, 550 P2d 374 (Alaska 1976).

When defendant pleads guilty without the assistance of counsel, the plea is invalid unless defendant waived his right to counsel. *Gregory v. State*, Op. No. 1269, 550 P2d 374 (Alaska 1976).

Failure of arraignment or trial record to demonstrate that defendant understood what he was giving up by declining the assistance of counsel was cause for reversal even though record showed that defendant had been advised of his right to counsel. *O'Dell v. Municipality of Anchorage*, Op. No. 1588, 576 P2d 104 (Alaska 1978).

Failure of court to ask questions of defendant to assure that he understood precisely what rights he was giving up by declining legal representation at sentencing hearing required vacation of sentence. *Smith v. State*, Op. No. 134, 651 P2d 1191 (Alaska App. 1982).

Trial judge committed reversible error in not allowing defendant, charged with drunk driving in 1984, to have a 1975 drunk driving conviction set aside on the ground that, although informed by the magistrate taking his guilty plea in 1975 of his right to an attorney, he was not informed of what an attorney could do for him. *Petranovich v. State*, Op. No. 547, 709 P2d 867 (Alaska App. 1985).

Failure of the trial court to assure by an on-the-record inquiry that the accused understood the benefits of counsel and the dangers of self-representation prior to waiving his right to counsel was reversible error notwithstanding the accused's previous contacts with the criminal justice system. *James v. State*, Op. No. 669, 730 P2d 811 (Alaska App. 1987).

Defendant's waiver of his right to counsel prior to pleading guilty to a DWI charge was valid where the magistrate advised him of the maximum and minimum penalties for the offense and after he responded affirmatively to the question: "Do you know what a lawyer is?". *Tobuk v. State*, Op. No. 683, 732 P2d 1099 (Alaska App. 1987).

III. Effective Assistance of Counsel

A defense counsel must perform at least as well as a lawyer with ordinary training and skill in the criminal law and must conscientiously protect his client's interest, undeflected by conflicting considerations. *Risher v. State*, Op. No. 1053, 523 P2d 421 (Alaska 1974).

All that is required of counsel in rendering effective assistance of counsel is that his decisions, when viewed in the framework of trial pressures, be within the range of reasonable actions which might have been taken by an attorney skilled in the criminal law, regardless of the outcome of such decisions. *Risher v. State*, Op. No. 1053, 523 P2d 421 (Alaska 1974).

A defendant does not suffer an unconstitutional deprivation of effective assistance of counsel because of an error commit-

ted by his attorney which in no manner contributes to the conviction. *Risher v. State*, Op. No. 1053, 523 P2d 421 (Alaska 1974).

A defendant who has not demonstrated that he understands the benefits of counsel cannot be said to have waived counsel. *Gregory v. State*, Op. No. 1269, 550 P2d 374 (Alaska 1976).

Rule 40. Time.

(a) **Computation.** Except as otherwise specifically provided in these rules, in computing any period of time, the day of the act or event from which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. When a period of the prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation. A half holiday shall be considered as other days and not as a holiday.

(b) **Enlargement.** When an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion:

(1) With or without motion or notice, order the period enlarged if application therefor is made before the expiration of the period originally prescribed or as extended by a previous order; or

(2) Upon motion permit the act to be done after the expiration of the specified period if the failure to act was the result of excusable neglect; but the court may not enlarge the period for taking any action under Rules 33, 34 and 35 except as otherwise provided in those rules, or the period for taking an appeal.

(c) **Unaffected by Expiration of Term.** The period of time provided for the doing of any act or the taking of any proceeding is not affected or limited by the expiration of a term of court. The expiration of a term of court in no way affects the power of a court to do any act in a criminal proceeding.

(d) **For Motions — Affidavits.** A written motion, other than one which may be heard *ex parte*, and notice of the hearing thereof shall be served not later than 5 days before the time specified for the hearing unless a different period is fixed by rule or order of the court. For cause shown, such an order may be made on *ex parte* application. Copies of all photographs, affidavits, other documentary evidence and a brief, complete written statement in support of the motion, shall be served with the motion. The opposing party shall serve either

HB

152

HOUSE COMMITTEE REPORT

(7) Date Referred: February 15, 1993 FURTHER REFERRALS: Judiciary

Date of Committee Action: 2/25/93

The STATE AFFAIRS Committee considered: HB 152

HOUSE BILL NO. 152 JURISDICTION OF MAGISTRATES

"An Act relating to magistrate jurisdiction."

RECOMMENDATIONS: the same title
 be replaced with CSHB 152 a new title
 have attached amendments(s)
 do pass
 do not pass
 no recommendations
 individual recommendations
 additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept) APPROVES PREVIOUS: (Dept/Date)
 fiscal impact _____ fiscal note(s) _____
 zero fiscal note Alaska Court System zero fiscal note(s) _____

SIGNING <u>DO</u> PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Al Meyer</i>	✓				
<i>F. J. Miller</i>	✓				
<i>Betty Davis</i>	✓				
<i>Harvey Oldberg</i>	✓				
<i>Lois T. Lund</i>	✓				
<i>Jan Sanders</i>	✓				
<i>Pat Foster</i>	✓				

Al Meyer

 CHAIRMAN'S SIGNATURE

(7)

Date Referred: March 1, 1993

FURTHER REFERRALS:

Date of Committee Action: 3-12-93

The JUDICIARY Committee considered:

HB 152

HOUSE BILL NO. 152

JURISDICTION OF MAGISTRATES

"An Act relating to magistrate jurisdiction."

RECOMMENDATIONS:

be replaced with CSHB 152 (JUD)

the same title
 a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____

APPROVES PREVIOUS: (Dept/Date) _____

fiscal impact _____

fiscal note(s) _____

zero fiscal note _____

zero fiscal note(s) Court System 3/1/93

SIGNING <u>DO</u> PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Brian D. Porter</i>	<input checked="" type="checkbox"/>	<i>Cliff Davidson</i>		<input checked="" type="checkbox"/>	
<i>Gail Phillips</i>	<input checked="" type="checkbox"/>				
<i>Don Rader</i>	<input checked="" type="checkbox"/>				
<i>Jeanette James</i>	<input checked="" type="checkbox"/>				
<i>Ken [unclear]</i>	<input checked="" type="checkbox"/>				
<i>Joseph [unclear]</i>	<input checked="" type="checkbox"/>				

Brian D. Porter
CHAIRMAN'S SIGNATURE

FISCAL NOTE

to 1

STATE OF ALASKA
1993 LEGISLATIVE SESSION

Bill Version: CSHB 152 (STA)
(H) Publish Date: 3/1/93

Revision Date: _____ Department Affected: Alaska Court System
 Title: An Act relating to magistrate BRU: Trial Courts
jurisdiction Components: _____
 Sponsor: House Judiciary
 Requestor: _____ COMPONENT SERIAL NO. 768

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE FUND SOURCE:						
----------------------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

1002 FEDERAL RECEIPTS						
1003 GF MATCH						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/PROGRAM RECEIPTS						
1006 GF/MHTIA						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY 93) impact: None

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: C. S. Christensen III, Staff Counsel *CS* Phone: 264-8228
 Division: Alaska Court System Date: 02/18/93

Approved by: Arthur H. Snowden, II, Administrative Director *AS* *CS* Date: 02/18/93
 Agency: Alaska Court System

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

HB

160

SENATE COMMITTEE REPORT

DATE: 4/23/93

FURTHER: FINANCE *Wanted 4/88*

DATE TURNED INTO OFFICE: 5/6/93

JUDICIARY Committee considered HOUSE BILL NO. 160(title am)

"An Act relating to the time for filing certain civil actions based on a defect in an improvement to real property; and providing for an effective date."

and recommends:

replace with Senate CS HB 160 (JUD)
or adopt previous _____ CS _____ ()
 attaches amendment(s)

- same title
- new title
- technical title change (HB only)

accompanying SCR for title change...

adopts _____ Letter of Intent
 further referral to the _____

- do pass
- do not pass
- no recommendation
- individual recommendations

NEW FISCAL NOTES

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTES

Department	Date	Zero	Fiscal
LAW	2-26-93	✓	
COURTS	3-01-93	✓	

Appropriation No Fiscal Note

DO PASS:

OTHER RECOMMENDATIONS:

Suzanne Little No Rec

George Adels

Chris Taylor No Rec
Chair: Signature and Recommendation

WINNER & ASSOCIATES

BRUCE L. BROWN
LISA H. DONNELLEY
RUSSELL L. WINNER

ATTORNEYS AT LAW
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OF COUNSEL:
MARY POTSET

Hi brand fax transmittal memo 7671	# of pages	2
KENNY LEAF	From	RUSS WINNE
AK. STATE SENATE	Co	WINNER + ASSO
JUDICIARY COMM	Phone#	277-9520
465-3922	Fax#	272-8330

April 28, 1993

Via Facsimile 465-3922

Kenny Leaf
Judiciary Committee
Alaska State Senate
Alaska State Capitol
Juneau, Alaska

Via Facsimile 465-3810

Deborah Luper
Aide to Senator Loren Leman
Alaska State Capitol
Juneau, Alaska

Re: SB 73 and HB 160, Liability of Design/Construction Professionals

Dear Kenny and Deborah:

I am writing on behalf of the Alaska Action Trust. As I relayed by telephone today, Kenny, my comments to Senator Leman's proposed amendment to CSSB 73 (Fin), dated 4/23/93 are as follows:

1. We urge that the bill include the following language that was added earlier by Senate Judiciary as AS 09.10.055(c)(4), but deleted by Senate Finance:

This section does not apply . . . if the defect was not discovered or could not reasonably have been discovered by the person bringing an action for personal injury, death, or property damage within the period of time set out in (a) of this section.

With this amendment, design professionals are immune from suit after ten years unless the victims are totally innocent. Partially negligent victims (who knew or reasonably should have known of the defect) will not be able to sue and collect a part of their damages under comparative negligence.

2. We suggest that if AS 09.17.080 is itself to be amended, it be done generally, rather than by referring only to AS 09.10.055. Accordingly, we suggest that the phrase "immune under AS 09.10.055" be changed to read "immune from suit" wherever it

WINNER COMMENTS ON
PROPOSED AMENDMENT BY LEMAN

K. Leaf and D. Luper
Re: HB 160 and SB 73
April 28, 1993
Page 2

appears in Senator Leman's proposed amendment. It would then apply to other immune parties like the United States and employers.

Please relay the above comments to Senator Taylor and Senator Leman, giving them my best regards. Thank you for your consideration of the above views.

Very truly yours,



Russell L. Winner

cc: Debra C. Gravo
Michael Schneider
Eric Sanders

RE: \ACTION\TRALS-1pr.LTR

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR LEMAN

TO: CSSB 73(FIN)

Page 1, line 1, after "actions":

Insert "and to apportionment of damages in a civil action"

Page 3, after line 25:

Insert new bill sections to read:

** Sec. 4. AS 09.17.080(a) is amended to read:

(a) In all actions involving fault of more than one party to the action, including third-party defendants and persons who have been released under AS 09.16.040 or determined to be immune under AS 09.10.055, the court, unless otherwise agreed by all parties, shall instruct the jury to answer special interrogatories or, if there is no jury, shall make findings, indicating

(1) the amount of damages each claimant would be entitled to recover if contributory fault and immunity under AS 09.10.055 are [IS] disregarded; and

(2) the percentage of the total fault of all of the parties to each claim that is allocated to each claimant, defendant, third-party defendant, and person who has been released from liability under AS 09.16.040 or found to be immune under AS 09.10.055.

* Sec. 5. AS 09.17.080(c) is amended to read:

(c) The court shall determine the award of damages to each claimant in accordance with the findings, subject to a reduction under AS 09.16.040, and enter judgment against each party liable. The court also shall determine and state in the judgment each party's equitable share of the obligation to each claimant in accordance with the respective percentages of fault, and (e) of this section if applicable.

* Sec. 6. AS 09.17.080(d) is amended to read:

(d) Except as provided under (e) of this section, the [THE] court shall enter

judgment against each party liable on the basis of several liability in accordance with that party's percentage of fault.

* Sec. 7. AS 09.17.080 is amended by adding a new subsection to read:

(e) In an action in which the amount of damages determined under (a)(1) of this section includes an allocation to a party that is immune under AS 09.10.055, the court may not enter judgment against the immune party but shall add the damages allocated to the immune party to each other party's liability in proportion to the relative percentages of fault of the other parties and enter judgment accordingly."

Renumber the following bill sections accordingly.

DATE TURNED INTO OFFICE: 15 APR 1993

JUDICIARY Committee considered SENATE BILL NO. 73

"An Act relating to the time for filing certain civil actions; and providing for an effective date."

and recommends:

[X] replace with _____ CS SB 73 (JUD)
or [] adopt previous _____ CS _____
[] attaches amendment(s)

[] same title
[X] new title
[] technical title change (HB only)

[] adopts _____ Letter of Intent

[] further referral to the _____

[] do pass

[] do not pass

[] no recommendation

[X] individual recommendations

NEW FISCAL NOTES

Table with 4 columns: Department, Date, Zero, Fiscal. Contains empty rows for recording new fiscal notes.

PREVIOUS FISCAL NOTES

Table with 4 columns: Department, Date, Zero, Fiscal. Contains handwritten entries: Court System (2-8-93, Zero checked), DEPT. OF LAW (2-4-93, Zero checked).

[] Appropriation No Fiscal Note

DO PASS

Handwritten lines for 'DO PASS' recommendations.

OTHER RECOMMENDATIONS: No Rec

Handwritten notes: Suzanne Little, George J. F. Co, Rick Helgrod - do pass when amc

Chair: Signature and Recommendation (Signature: Chris L. Taylor)

HB

167

CS FOR HOUSE BILL NO. 167(FIN)
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVE HANLEY

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to air quality control and the prevention, abatement, and
2 control of air pollution; relating to inspection and enforcement powers of the
3 Department of Environmental Conservation; and providing for an effective date."

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

5 * Section 1. POLICY AND PURPOSES. (a) It is the policy of the state to have a
6 program to prevent, abate, control, and identify air pollution that complies with 42 U.S.C.
7 7401 - 7671q (Clean Air Act), as amended, and federal regulations adopted under those laws.

8 (b) Changes in state law are necessary to allow the state to continue to have primary
9 management of air quality in the state and to retain federal approval of the state's air quality
10 control program in order to ensure the continued receipt of federal highway and air pollution
11 control money. The federal Environmental Protection Agency must prohibit the approval of
12 highway projects and highway grants, and may withhold air pollution control grants, if the
13 state does not comply with 42 U.S.C. 7401 - 7671q (Clean Air Act).

14 (c) It is the intent of the legislature to comply with 42 U.S.C. 7401 - 7671q (Clean

1 Air Act) in a manner that meets the federal requirements, allows efficient and cost effective
2 processing of permits, requires accountability from the Department of Environmental
3 Conservation on matters relating to recovery of program costs, and ensures the productivity
4 of the state's businesses while protecting the health and welfare of the state's residents.

5 (d) It is the intent of the legislature that the Department of Environmental
6 Conservation implement this Act in a manner that contains costs, minimizes the number of
7 staff performing air quality permit duties, fosters accountability, improves efficiency of
8 government, and uses its contracting authority as appropriate to undertake alternative methods
9 of accomplishing the duties under this Act. To accomplish this objective, the legislature
10 encourages the department to use services from the private sector to accomplish portions of
11 the permit program.

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

13 CHAPTER 14. AIR QUALITY CONTROL.

14 ARTICLE 1. GENERAL REGULATIONS AND CLASSIFICATIONS.

15 Sec. 46.14.010. EMISSION CONTROL REGULATIONS. (a) After public
16 hearing, the department may adopt regulations under this chapter establishing ambient
17 air quality standards, emission standards, or exemptions to implement a state air quality
18 control program required under 42 U.S.C. 7401 - 7671q (Clean Air Act), as amended,
19 and regulations adopted under those sections. The standards established under this
20 section may be for the state as a whole or may vary in recognition of local conditions.

21 (b) Unless the governor has determined that an emergency exists that requires
22 emergency regulations under AS 44.62.250, the department may adopt the following
23 types of regulations only after the procedures established in (a), (c), and (d) of this
24 section and compliance with AS 46.14.015:

25 (1) a regulation that establishes an ambient air quality standard for an
26 air contaminant for which there is no corresponding federal standard;

27 (2) a regulation that establishes an ambient air quality standard or
28 emission standard that is more stringent than a corresponding federal standard;

29 (3) a regulation that establishes an equivalent emission limitation for
30 a hazardous air contaminant for which the federal administrator has not adopted a
31 corresponding maximum achievable control technology standard; or

1 (4) a regulation that regulates emissions from a source or facility under
2 the authority of AS 46.14.120(e), 46.14.130(a)(3)(B), or 46.14.130(b)(4)(B).

3 (c) In preparation for peer review under AS 46.14.015 and before adopting a
4 regulation described under (b) of this section, the department shall

5 (1) find in writing that exposure profiles and either meteorological
6 conditions or source characteristics in the state or in an area of the state reasonably
7 require the ambient air quality standard, or emission standard to protect human health
8 and welfare or the environment; this paragraph does not apply to a regulation under
9 (b)(3) of this section;

10 (2) find in writing that the proposed standard or emission limitation is
11 technologically feasible; and

12 (3) prepare a written analysis of the economic feasibility of the
13 proposal.

14 (d) Before adopting a regulation described in (b)(2) of this section, the
15 department shall find in writing that exposure profiles and either meteorological
16 conditions or source characteristics are significantly different in the state or in an area
17 of the state from those upon which the corresponding federal regulation is based.

18 (e) When incorporated into more than one permit, emission standards and
19 limitations, emissions monitoring and reporting requirements, and compliance
20 verification requirements that are generally applicable statewide or are generally
21 applicable to individual source or facility types shall be adopted in regulation unless
22 they have been requested by the owner and operator to whom the permit is issued.
23 The department shall, by regulation, adopt a standard, limitation, or requirement
24 described in the subsection as soon as its general applicability is reasonably
25 foreseeable.

26 (f) An emission standard adopted by the department may be applicable to
27 individual sources within a facility or to all sources within a facility. For purposes of
28 determining compliance with applicable regulations and with permit limitations, the
29 department may allow numerical averaging of the emissions of each air contaminant
30 from several sources within a facility if

31 (1) requested by the owner and operator, and

1 (2) allowed under 42 U.S.C. 7401 - 7671q (Clean Air Act), as
2 amended, and regulations adopted under those sections.

3 Sec. 46.14.015. SPECIAL PROCEDURE FOR MORE STRINGENT
4 REGULATIONS. (a) Before the department adopts a regulation described under
5 AS 46.14.010(b), written findings under AS 46.14.010(c) and (d) shall be made
6 available by the department to the public at locations throughout the state that the
7 department considers appropriate.

8 (b) If requested by an owner or operator whose facility would be affected by
9 a regulation described in AS 46.14.010(b), the department shall submit the findings
10 described under (a) of this section, the studies on which the findings are based, and
11 other related data for peer review to a minimum of three separate parties who are not
12 employees of the department and who are determined by the commissioner to be
13 technically qualified in the subject matter under review. The commissioner shall
14 ensure that the peer review includes an analysis of the factors considered by the
15 commissioner to support the standards proposed to be adopted and recommendations,
16 if any, for additional research or investigation considered appropriate. Peer review
17 reports shall be submitted to the commissioner within 45 days after the department
18 submits a matter for peer review unless the commissioner determines that additional
19 time is required.

20 (c) The department shall make available to the public at least 30 days before
21 the public hearing required under AS 46.14.010(a), at convenient locations, copies of
22 the department's proposed regulation, the findings of the department describing the
23 basis for adoption of the regulation, and the peer review reports, if any, submitted
24 under (b) of this section.

25 (d) The department shall contract with persons to perform peer review under
26 (b) of this section. All persons selected shall be selected on the basis of competitive
27 sealed proposals under AS 36.30.200 - 36.30.270 (State Procurement Code). The
28 commissioner may not contract with a person to perform peer review under this section
29 if the person has a significant financial interest or other significant interest that could
30 bias evaluation of the proposed regulation. An interest is not considered significant
31 under this subsection if it is an interest possessed generally by the public or a large

1 class of persons or if the effect of the interest on the person's ability to be impartial
2 is only conjectural.

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

11 (b) The department or a local air quality control program authorized under
12 AS 46.14.400 may require an owner and operator of a facility or source classified
13 under this section to report information to the department or the authorized local
14 program concerning location, size, and height of contaminant outlets or area sources,
15 processes employed, fuels used, the nature and time periods or duration of emissions,
16 and other information relevant to air quality that is available or reasonably capable of
17 being calculated and compiled.

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

22 ARTICLE 2. EMISSION CONTROL PERMIT PROGRAM

23 Sec. 46.14.110. ADDITIONAL CONTAMINANT CONTROL MEASURES.

24 (a) The department may require that notice be given to it before the undertaking of
25 the construction, installation, or establishment of particular types or classes of new air
26 contaminant sources specified in its regulations. Within 15 days of its receipt of the
27 notice, the department shall require, as a condition precedent to the undertaking, the
28 submission of plans and other information it considers necessary in order to determine
29 whether the proposed undertaking will be in accord with applicable regulations in force
30 under this chapter.

31 (b) Within 30 days of receipt of the plans and information for a proposed

1 undertaking, the department shall either approve the undertaking and issue a permit,
2 or if the department determines that the proposed undertaking will not meet the
3 requirements of this chapter and applicable regulations, it shall issue a prohibition
4 order against the undertaking.

5 (c) A person subject to a prohibition order as prescribed in (b) of this section,
6 upon written request in accordance with regulations of the department, is entitled to
7 a hearing on the order. Following the hearing the order may be affirmed, modified,
8 or withdrawn.

9 (d) For the purposes of this chapter, addition to or enlargement or replacement
10 of an air contaminant source, or a major alteration of one, shall be construed as an
11 undertaking for the construction, installation, or establishment of a new air contaminant
12 source.

13 (e) Features, machines, and devices constituting parts of or called for by plans
14 or other information submitted under (a) of this section shall be maintained in good
15 working order.

16 (f) This section does not authorize the department to require the use of
17 machinery, devices, or equipment from a particular supplier or produced by a particular
18 manufacturer if the required performance standards may be met by machinery, devices,
19 or equipment available from other sources.

20 (g) The absence of or the department's failure to adopt a regulation or issue
21 an order under this section does not relieve a person from compliance with emission
22 control requirements or other provisions of law.

23 (h) The department may require the payment of a reasonable fee for the review
24 of plans and information required to be submitted. A fee for a single review may not
25 exceed \$25.

26 Sec. 46.14.120. PERMITS FOR CONSTRUCTION, MODIFICATION, OR
27 OPERATION. (a) Before constructing, installing, modifying, reconstructing, or
28 establishing a facility subject to AS 46.14.130(a), the owner and operator shall obtain
29 a construction permit under this chapter.

30 (b) Except when considered to be in compliance with this chapter under a
31 regulation adopted under AS 46.14.140(a)(11) or 46.14.220(c), the owner and operator

add AS 46.14.275

1 shall obtain an operating permit under this chapter before operating a facility subject
2 to AS 46.14.130(b).

3 (c) A permittee shall comply with the terms and conditions of a permit or a
4 modifying compliance order issued by the department under this chapter or a court
5 order. A person operating under the application shield available under
6 AS 46.14.140(a)(11), ^{add AS 46.14.275} shall comply with the terms and conditions of the pending
7 application and applicable regulations.

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

11 (e) If the federal administrator exempts a source from the requirements of
12 42 U.S.C. 7561a(a) (Clean Air Act, sec. 502(a)), the commissioner shall consider the
13 factors used by the administrator in reaching that determination and, by regulation,
14 shall issue a similar determination unless public health or air quality effects provide
15 a reasonable basis to regulate the source.

16 **Sec. 46.14.130. FACILITIES REQUIRING PERMITS.** (a) Before
17 constructing, installing, modifying, reconstructing, or establishing a facility, the owner
18 and operator shall obtain a construction permit from the department if the facility is
19 any one of the following:

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

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

24 (3) a new facility of a type classified under AS 46.14.020

25 (A) as having the potential to violate the ambient air quality
26 standards; or

27 (B) under a finding by the department that public health or air
28 quality effects provide a reasonable basis to regulate the source;

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

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(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, 46.14.020, or 46.14.140; 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 the 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

(A) the federal administrator by regulation; or

(B) the department under a finding that public health or air quality effects provide a reasonable basis to regulate the source.

Sec. 46.14.140. EMISSION CONTROL PERMIT PROGRAM REGULATIONS. (a) The department shall adopt regulations to address substantive and procedural elements of the emission control permit program established under this chapter that are 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

(1) a standard permit application form that meets the requirements of

1 federal regulations adopted under 42 U.S.C. 7661a(b) (Clean Air Act, sec. 502(b));

2 (2) procedures for preparation and submission of a monitoring,
3 reporting, and quality assurance plan and, if required, a compliance schedule describing
4 how a permitted facility will comply with the applicable requirements of this chapter;

5 (3) procedures for

6 (A) specifying when permit applications and renewal requests
7 are to be submitted;

8 (B) specifying the time duration for department review of permit
9 applications;

10 (C) processing and reviewing an application;

11 (D) providing public notice, including opportunity for public
12 comment and hearing; and

13 (E) issuing permits, including procedures for issuing permits for
14 temporary operations or open burn activities;

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

16 (A) emission standards and limitations;

17 (B) monitoring, record keeping, and reporting for facilities
18 subject to AS 46.14.130;

19 (C) inspection and entry;

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

22 (E) annual certification of compliance;

23 (F) excess emission or process deviation reporting; and

24 (G) equipment malfunctions and emergencies;

25 (5) fees and procedures for collecting fees;

26 (6) provisions addressing late payment or nonpayment of fees, which
27 may include assessment of penalties and interest or refusal to issue, amend, modify,
28 or renew an air quality control permit;

29 (7) the duration of permits;

30 (8) procedures for modifying or amending a permit that provide
31 flexibility in the operation of the facility, including procedures to allow changes to a

1 permitted facility without requiring a permit modification, consistent with the purposes
2 of this chapter and with 42 U.S.C. 7401 - 7671q (Clean Air Act);

3 (9) reasonable provisions for renewing, reopening, revoking and
4 reissuing, and terminating a permit consistent with the purposes of this chapter and 42
5 U.S.C. 7401 - 7671q (Clean Air Act);

6 (10) provisions allowing for physical or operational limitations that will
7 reduce a facility's emissions to levels below those that would make the facility subject
8 to part or all of AS 46.14.120 and 46.14.130;

9 (11) provisions authorizing facility operation while a permit application
10 is pending, consistent with 42 U.S.C. 7661b(d) (Clean Air Act, sec. 503(d));

11 (12) provisions for ensuring that compliance with an operating permit
12 issued under this chapter will be considered to be compliance with 42 U.S.C. 7661a
13 (Clean Air Act, sec. 502) and other provisions of state or federal law specifically
14 provided for by the department consistent with 42 U.S.C. 7401 - 7671q (Clean Air
15 Act) and regulations adopted under state and federal law; and

16 (13) provisions allowing for certification of inspectors who evaluate
17 compliance with the terms and conditions of a permit, order, regulation, or other
18 provision of law authorized under this chapter.

19 (b) A permit issued under this chapter may not require a person to use

20 (1) machinery, devices, or equipment of a particular type, from a
21 particular supplier, or produced by a particular manufacturer; or

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

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

28 (B) approved an alternative hazardous air pollutant standard
29 under 42 U.S.C. 7412(h)(3), as amended.

30 (c) The absence of, or the department's failure to adopt, a regulation under this
31 section does not relieve a person from compliance with a permit issued under this

1 chapter and with other provisions of law, including emission control requirements.

2 Sec. 46.14.150. TIME FOR SUBMISSION OF OPERATING PERMIT
3 APPLICATIONS. (a) The owner and operator of a facility required to have an
4 operating permit under this chapter shall submit the required application and other
5 information required by the department by regulation no later than (1) 12 months after
6 the date on which the facility becomes subject to AS 46.14.120(b); or (2) 60 days
7 before beginning construction of a source if the facility containing the source is a new
8 facility that is not required to obtain a construction permit under AS 46.14.130(a),
9 whichever is earlier.

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

13 Sec. 46.14.160. COMPLETENESS DETERMINATION. (a) The department
14 shall review every application submitted under this chapter for completeness. To be
15 determined complete, an application must provide the information identified by the
16 department in regulations adopted under AS 46.14.140 and in standard application
17 forms provided by the department under AS 46.14.140(a)(1) and must be certified true
18 and correct by the owner and operator.

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

23 (c) If, during the processing of an application after it has been determined or
24 considered to be complete, the department finds that additional information is
25 necessary to evaluate or take action on that application, the information may be
26 requested in writing from the owner and operator. A request for information under
27 this subsection does not render the application incomplete. However, notwithstanding
28 AS 46.14.275, an owner and operator may be found in violation of this chapter for
29 operating without a valid permit if they fail to provide timely additional information.

30 Sec. 46.14.170. ADMINISTRATIVE ACTIONS REGARDING PERMITS. (a)
31 Except as provided in AS 46.14.220 or in regulations adopted under

1 AS 46.14.140(a)(6), after receipt of a complete application, and after notice and
2 opportunity for public comment and hearing, the department shall issue or deny

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

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

8 (b) Notwithstanding (a) of this section, the department may establish a phased
9 schedule for acting on operating permit applications submitted within 12 months
10 following the date on which the federal administrator approves the state program under
11 42 U.S.C. 7661a(d). A phased schedule must ensure that at least one-third of the
12 applications submitted during the first 12 months of the state's operation of its permit
13 program after federal approval will be acted on by the department during each of the
14 first three 12-month periods following federal approval of the program. The
15 department shall give priority to the issuance of permits for new facilities and
16 modifications of existing facilities.

17 (c) Failure by the department to act within the time limits established in or
18 under (a) or (b) of this section is considered to be a final agency action, but only for
19 the purpose of judicial review to determine whether the court will require that action
20 be taken by the department.

21 Sec. 46.14.180. MONITORING. Monitoring by the owner and operator of
22 stack emissions or ambient air quality shall be required by the department only for
23 purposes of demonstrating compliance with applicable permit program requirements.
24 Monitoring requirements must be reasonable and based on test methods, analytical
25 procedures, and statistical conventions approved by the federal administrator or the
26 department or otherwise generally accepted as scientifically competent. Unless
27 otherwise agreed to by the owner and operator and the department,

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

31 (2) monitoring activities must be consistent with the applicable

1 emission standards and other permit or permit application requirements.

2 Sec. 46.14.190. SINGLE PERMIT. (a) Except as provided in (b) of this
3 section, the department shall issue only a single operating permit to a facility,
4 regardless of whether a facility contains a single source or multiple sources.

5 (b) The department may, upon request of a facility owner or operator, issue
6 more than one permit for a facility. Substantive and procedural requirements otherwise
7 applicable to a facility remain applicable regardless of whether the facility owner and
8 operator apply for one or more permits.

9 Sec. 46.14.200. REVIEW OF PERMIT ACTION. A person who has a private,
10 substantive, legally protected interest under state law that may be adversely affected
11 by the permit action, the owner and operator, or a person who participated in the
12 public comment process may request an adjudicatory hearing under the department's
13 adjudicatory hearing procedures. After the issuance of an adjudicatory hearing
14 decision, a party to the hearing may obtain judicial review of that decision as provided
15 in the Alaska Rules of Appellate Procedure.

16 Sec. 46.14.210. GENERAL OPERATING PERMITS. After notice and
17 opportunity for public comment and hearing, the department may, unless the permit
18 is disapproved by the federal administrator, establish a general operating permit that
19 would be applicable to more than one facility determined by the department to be
20 similar in source structure. A general operating permit must contain provisions that
21 meet the requirements of this chapter that are applicable to operating permits. A
22 general operating permit issued to a particular person takes effect when the person's
23 application is determined to be complete unless the department notifies the applicant
24 that the general permit is not applicable to the person's facility.

25 Sec. 46.14.215. TEMPORARY OPERATIONS. The department may issue a
26 single operating permit under AS 46.14.170, authorizing a facility to operate at specific
27 multiple locations in the state for temporary periods of time. A permit described in
28 this section is valid only for the specific locations identified in the application and
29 authorized by the department. The department may not issue a permit under this
30 section unless the permit contains conditions that will ensure compliance with this
31 chapter at each authorized location, including compliance with ambient air quality

1 standards and applicable increment or visibility requirements adopted under this
2 chapter. A permit under this section must require the owner and operator to notify the
3 department at least 30 days before a change in location of a facility permitted under
4 this section.

5 Sec. 46.14.220. OBJECTION BY FEDERAL ADMINISTRATOR. (a) An
6 operating permit may not be issued under this chapter until the federal administrator
7 approves the permit, or until 45 days after a copy of the final draft permit has been
8 provided by the department to the federal administrator, whichever is earlier. If,
9 during the 45-day period, the federal administrator files an objection with the
10 department, the department shall notify the applicant of the objection. The department
11 may not issue the permit until the objection is resolved or the permit is revised to meet
12 the objection of the federal administrator. Upon request of an applicant, the
13 department shall assist the applicant in an effort to resolve promptly an objection by
14 the federal administrator.

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

19 *deleted* (c) Regulations adopted under AS 46.14.140(a)(11) may provide that while a
20 petition under (b) of this section is pending, compliance with an operating permit
21 issued under (a) of this section is considered to be compliance with this chapter insofar
22 as those sections require an operating permit.

23 Sec. 46.14.230. DURATION OF OPERATING PERMITS. (a) An operating
24 permit under this chapter, including an operating permit that contains a compliance
25 schedule, shall be issued for a fixed term of five years after the date of issue, except
26 as provided for temporary operations under AS 46.14.215 or unless a shorter term is
27 requested by the permit applicant.

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

31 Sec. 46.14.235. FEDERAL TERMINATION, MODIFICATION, OR

1 REVOCATION AND REISSUANCE OF PERMITS. The department shall take
2 measures practicable and otherwise lawful to avoid termination, modification, or
3 revocation and reissuance by the federal administrator of permits issued by the
4 department under this chapter.

5 Sec. 46.14.240. PERMIT ADMINISTRATION FEES. (a) The owner or
6 operator of a facility who is required to apply for a permit under AS 46.14.130 shall
7 pay to the department all assessed permit administration fees established under (b) of
8 this section except that the person named in a permit issued under AS 46.14.170 shall
9 pay assessed permit administration fees incurred after the date the permit is issued.

10 (b) The department shall establish by regulation a permit administration fee
11 rate. The rate shall be set on the basis of dollars per hour of service provided for a
12 specific permittee. The department may periodically modify a fee rate to reflect
13 increases or decreases in the actual reasonable costs of providing the services. The
14 department shall assess permit administration fees on a periodic basis after service is
15 rendered, but the department may assess a retainer toward this fee at the time work
16 commences on a permit application or at the time departmental services are requested
17 for the development of a permit application.

18 (c) In (a) and (b) of this section, "permit administration fees" are fees assessed
19 to recover costs incurred by the department and other state or local governmental
20 agencies, to the extent required under 42 U.S.C. 7661a(b)(3)(A) and federal regulations
21 implementing that provision, for the following services to a specific facility that are
22 performed in order to implement the permit program established under this chapter:

23 (1) providing preapplication consultation, assistance, and completeness
24 review of applications for a permit, permit amendment, permit modification, or
25 renewal, except as provided in (d) of this section;

26 (2) reviewing or assisting in preparation of facility specific permit
27 support documents, including on-site evaluations, except as provided in (d) of this
28 section;

29 (3) receiving, reviewing, preparing, processing, and issuing permits,
30 permit amendments, modifications, reopenings, renewals and revocations, and
31 reissuance;

1 (4) preparing general operating permits under AS 46.14.210; however,
2 costs must be allocated on an equitable basis to each facility covered by the general
3 operating permit;

4 (5) performing facility inspections and compliance evaluations;

5 (6) reviewing, compiling, and reporting facility specific emission,
6 ambient monitoring, or process measurement data;

7 (7) preparing, evaluating, or processing plans or documents to obtain
8 facility compliance or rectify noncompliance with permit terms and conditions, but not
9 including any enforcement actions; and

10 (8) assessing and collecting delinquent permit administration fees and
11 emission fees.

12 (d) Costs incurred by the department and other state or local governmental
13 agencies for services described in (c)(1) - (2) of this section to facilities that qualify
14 for assistance under AS 46.14.300 - 46.14.310 shall be recovered from emission fees
15 under AS 46.14.250(h)(2).

16 Sec. 46.14.250. EMISSION FEES. (a) A person named as permittee in a
17 permit issued under AS 46.14.170 shall pay to the department all assessed emission
18 fees established under this section.

19 (b) The department shall establish by regulation an emission fee rate. The rate
20 shall be set on the basis of dollars per ton of air contaminant emitted. The department
21 shall assess emission fees annually on or before July 1 based on a facility's estimated
22 assessable emissions for the subsequent fiscal year. The department may allow
23 installment payments of assessed emission fees.

24 (c) For a facility that begins operation during a fiscal year, the department
25 shall prorate the first year's fee to cover the time period occurring before the next
26 annual payment date. The owner or operator shall pay the initial emission fee upon
27 commencement of lawful facility operation unless authorized to pay by installments
28 under (b) of this section. The first year's emission fee may not duplicate a fee paid
29 by a permittee under AS 44.46.025 for the same sources for the same time period. If
30 the fees would otherwise be duplicative, the department shall provide a credit toward
31 the emission fee in the amount of the unused balance of the fee collected under

1 AS 44.46.025. The unused balance to be credited shall be based on prorating the total
2 original fee under AS 44.46.025 for the time period for which an emission fee applies.

3 (d) The department shall design the emission fee rate to distribute the total
4 annual incurred costs described under (h) of this section in a manner so that each
5 permittee is assessed an annual emission fee that reflects an equitable apportionment
6 of the fees paid by each facility type, size, or category. In making an apportionment
7 under (f)(6) of this section, the department shall consider factors such as exemptions
8 or reduced rates for small amounts of emissions, limits upon assessable emissions,
9 exempting small business facilities from the costs of the small business assistance
10 program established under AS 46.14.300, air pollution prevention efforts, and other
11 factors that may ensure fair distribution of the costs described under (h) of this section.

12 (e) The department shall set the initial fee rate for the first two years following
13 approval of the permit program under this chapter by the federal administrator on the
14 basis of dollars per ton of assessable emissions. In calculating assessable emissions
15 for the purpose of this subsection, the department may not include an amount in excess
16 of 4,000 tons per year of an air contaminant not defined as a regulated pollutant under
17 42 U.S.C. 7661a(b)(3)(B)(ii) (Clean Air Act, sec. 502 (b)(3)(B)(ii)).

18 (f) After the two years described in (e) of this section, the department shall set
19 the emission fee rate in regulation to implement the policy established in (d) of this
20 section. The department shall base the regulation on the findings of a report, which
21 the department shall make available to the public with proper notice before adoption
22 of the regulation, that examines

- 23 (1) fees assessed;
- 24 (2) alternative fee rates or formulas;
- 25 (3) types, sizes, or categories of facilities, their respective emission
26 quantities, and their previous or proposed fee burden;
- 27 (4) apparent inequities encountered in the initial fee rate;
- 28 (5) total costs incurred or anticipated to be incurred under (h) of this
29 section; and
- 30 (6) other factors that ensure fair distribution of the costs described in
31 (h) of this section.

1 (g) The department shall periodically, and at least every three years, evaluate
2 the fee rate set under this section to determine if it is responsive to the policy
3 established in (d) of this section and shall provide its findings in a report.

4 (h) In this section,

5 (1) "assessable emission" means the quantity of each air contaminant
6 for which emission fees are assessed and is the lesser of

7 (A) the annual rate of emissions, in tons per year, of each air
8 contaminant authorized by the facility's operating permit; or

9 (B) the projected annual rate of emissions, in tons per year, of
10 each air contaminant by the facility based upon previous actual annual
11 emissions if the permittee can demonstrate to the department its previous actual
12 annual rate of emissions through monitoring, modelling, calculations, or other
13 method acceptable to the department;

14 (2) "emission fees" mean fees assessed to recover costs incurred by the
15 department and other state or local governmental agencies, to the extent required under
16 42 U.S.C. 7661a(b)(3)(A) and federal regulations implementing that provision, for
17 execution of the permit program established under this chapter that are generally not
18 associated with service provided to a specific facility, including the costs incurred by
19 the department or a local air quality program to comply with AS 46.14.010 -
20 46.14.015; the costs may include rent, utilities, permit program management,
21 administrative and accounting services, and other costs as identified by the department
22 in regulations; the fees shall also be sufficient to recover the cost of the small business
23 assistance program under AS 46.14.300 - 46.14.310.

24 Sec. 46.14.255. PENALTY AND INTEREST FOR NONPAYMENT. (a) The
25 department shall adopt regulations that provide for the assessment and collection of a
26 penalty of not more than five percent per month up to a maximum of 25 percent of
27 the fee established under AS 46.14.240 and 46.14.250 against the owner and operator
28 of a facility if the owner and operator fail to timely pay a fee lawfully imposed under
29 this chapter. The department may also assess and collect interest against the owner
30 and operator, computed at two percentage points higher than the prime rate existing
31 on the day the fee was due. Interest under this subsection begins to accrue 30 days

1 after payment was due. A penalty may not be assessed under this subsection until 45
2 days after the department, by certified mail, return receipt requested, provides written
3 notification of nonpayment to the owner and operator.

4 (b) If the owner and operator fail to pay a fee imposed under AS 46.14.240
5 and 46.14.250, a penalty or interest imposed under (a) of this section, or a damage
6 award imposed under AS 46.03.760(f) or 46.03.790 for a violation of this chapter, the
7 department may refuse to issue or renew permits requested by the owner and operator
8 or refuse to amend or modify a permit when the amendment or modification is
9 requested by the owner and operator.

10 (c) In (a) of this section, "prime rate" means the lowest money center prime
11 rate of interest published in the Wall Street Journal.

12 Sec. 46.14.260. CLEAN AIR PROTECTION FUND. (a) The clean air
13 protection fund is established. The fund consists of fees collected by the department
14 under AS 46.14.240 and 46.14.250 and under regulations authorized by AS 46.14.140,
15 as required by 42 U.S.C. 7661a(b)(3)(C)(iii) (Clean Air Act, sec. 502(b)(3)(C)(iii)) for
16 state participation in the federal emission control permit program.

17 (b) The money deposited into the clean air protection fund may only be used
18 to cover the reasonable direct and indirect costs required to support the permit program
19 under this chapter and the activities of the small business assistance program that are
20 directed at facilities subject to this chapter, not including court costs or other costs
21 associated with an enforcement action.

22 Sec. 46.14.270. SPECIAL ACCOUNT. Civil or criminal penalties, fines,
23 assessments, or damages, and interest, attorney fees, and costs collected as a result of
24 a violation relating to this chapter and interest collected under AS 46.14.255 shall be
25 deposited in the general fund and credited to a special account called the "clean air
26 protection account."

27 Sec. 46.14.275. TIMELY AND COMPLETE APPLICATION AS SHIELD.
28 If an owner and operator have submitted a timely and complete application for a
29 permit or a permit renewal, as applicable, but final action has not been taken on the
30 application, the owner's and operator's failure to have an operating permit is not a
31 violation of this chapter unless the delay in final action was due to the failure of the

1 owner and operator to submit, in a timely manner, additional information required or
2 requested to process the application. An owner and operator required to have an
3 operating permit under this chapter are not in violation of the operating permit program
4 established under this chapter before the date on which the owner and operator are
5 required to submit an application under AS 46.14.150.

6 Sec. 46.14.280. TERMINATION, MODIFICATION, REOPENING, OR
7 REVOCATION AND REISSUANCE OF PERMITS BY THE DEPARTMENT. (a)
8 After 30 days' written notice to the permittee, the department

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

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

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

17 (C) the permittee has failed to construct or modify a facility
18 within the time period specified in a construction permit, if any, required under
19 AS 46.14.130(a);

20 (2) may modify, or revoke and reissue a construction or operating
21 permit if the department finds that

22 (A) the permit contains a material mistake; or

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

25 (3) shall reopen a permit issued under this chapter

26 (A) based on a determination of the federal administrator or the
27 department that the permit must be revised to comply with 42 U.S.C. 7401-
28 7671q (Clean Air Act) and regulations adopted thereunder; or

29 (B) to incorporate changes in law, or to impose equivalent
30 emission limitation, that become applicable after the permit is issued if the
31 permit is issued to a major facility and has a remaining duration of three or

1 more years; the department shall make revisions allowed under this
2 subparagraph as soon as practicable, but, regarding a change in law, no later
3 than 18 months after the change in law takes effect; the department may not
4 reopen the permit of a major facility under this subparagraph if the change in
5 law is not effective until after the date that the permit expires.

6 (b) Reopening of a permit under (a)(3) of this section shall be treated as a
7 permit renewal by the department if the procedural requirements for permit renewal
8 have been met.

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

12 **Sec. 46.14.285. AMENDMENT AND MODIFICATION OF PERMIT UPON**
13 **REQUEST OF PERMITTEE. (a) A permittee may request**

14 (1) a permit amendment that provides for administrative changes to a
15 permit that do not result in material changes in permit terms or conditions, such as
16 changes in the name of the owner or operator, mailing address, registered agent, or
17 assessable emissions;

18 (2) an expedited authorization for minor changes in permit terms and
19 conditions that provide for flexibility in the operation of a facility consistent with 42
20 U.S.C. 7661a(b)(10) (Clean Air Act, sec. 502(b)(10)), and regulations adopted under
21 that paragraph; the department may adopt regulations that include procedures under
22 which the public may participate when an amendment or modification is requested
23 under this paragraph; or *expedited authorization*

24 (3) a modification of a permit to authorize significant changes in permit
25 terms and conditions consistent with this chapter and regulations adopted under
26 AS 46.14.140.

27 (b) The department shall review all requests submitted under (a) of this section
28 and issue or deny the permit amendment or modification or otherwise authorize or
29 deny the request consistent with this chapter and regulations adopted under this
30 chapter.

31 **Sec. 46.14.290. PERMIT AS SHIELD. (a) To the extent allowed under**

1 42.U.S.C. 7661c(f) (Clean Air Act, sec. 504(f)), a permittee is considered in
2 compliance with applicable requirements of this chapter, regulations adopted under this
3 chapter and 42 U.S.C. 7401 - 7671q (Clean Air Act) and regulations adopted under it,
4 if

5 (1) the applicable requirements are included and specifically identified
6 in the owner or operator's permit; or

7 (2) the requirements are determined in writing not to be applicable to
8 the permitted facility; a determination made under this paragraph shall be included in
9 the permit.

10 (b) This section does not alter or affect

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

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

15 (3) the ability of the department to obtain information from an owner
16 or operator of a facility under AS 46.14.020(b).

17 **ARTICLE 3. SMALL BUSINESS ASSISTANCE PROGRAM.**

18 **Sec. 46.14.300. SMALL BUSINESS ASSISTANCE PROGRAM.** (a) A small
19 business assistance program is established in the department. The department shall
20 include the program in the state air quality control plan developed under 42 U.S.C.
21 7401 - 7671q (Clean Air Act).

22 (b) The small business assistance program shall, by regulation, meet the
23 requirements of 42 U.S.C. 7661f(a) (Clean Air Act, sec. 507(a)), including the
24 requirement that a small business advocate be designated.

25 (c) Except as provided in AS 46.14.310(b), the department shall provide
26 assistance as described in (b) of this section to a requesting facility that is not a small
27 business concern as defined in 15 U.S.C. 631 but that is subject to the requirements
28 of this chapter if the legislature appropriates money from the general fund for this
29 purpose.

30 **Sec. 46.14.310. POWER TO LIMIT SMALL BUSINESS ASSISTANCE**
31 **PROGRAM.** (a) After consultation with the federal administrator and the

1 administrator of the United States Small Business Administration and after providing
2 notice and opportunity for public hearing, the department may exclude from the scope
3 of the small business assistance program established in AS 46.14.300 a category or
4 subcategory of small business facilities that the department finds to have sufficient
5 technical and financial capabilities to meet the requirements of this chapter and federal
6 law without the assistance provided under AS 46.14.300 - 46.14.320.

7 (b) Nothing in AS 46.14.300(c) precludes the department from excluding a
8 business facility or category of business facilities that the department finds to have
9 sufficient technical and financial capabilities to meet the requirements of this chapter
10 without assistance from the department.

11 Sec. 46.14.320. COMPLIANCE ADVISORY PANEL. (a) There is
12 established in the department a compliance advisory panel whose members shall serve
13 staggered three-year terms. A member may not serve more than two three-year terms
14 consecutively.

15 (b) The panel consists of

16 (1) two members who are not owners or representatives of owners of
17 small business facilities, selected by the governor to represent the general public;

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

20 (3) four members who are owners or representatives of owners of small
21 business facilities, selected as follows:

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

24 (B) if there are members of the senate who are not part of the
25 majority caucus of the senate, the leader of the largest nonmajority group shall
26 select a panel member; if all members of the senate are in the majority caucus,
27 then the president of the senate shall select a second panel member in addition
28 to the selection authorized under (A) of this paragraph;

29 (C) if there are members of the house who are not part of the
30 majority caucus of the house, the leader of the largest nonmajority group shall
31 select a panel member; if all members of the house are in the majority caucus,

1 then the speaker of the house shall select a second panel member in addition
2 to the selection authorized under (A) of this paragraph.

3 (c) The panel members shall serve without compensation but are entitled to
4 transportation expenses and per diem as authorized for members of boards and
5 commissions under AS 39.20.180.

6 (d) The compliance advisory panel shall

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

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

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

14 (4) make periodic reports to the administrator concerning the
15 compliance of the small business assistance program with requirements of 44 U.S.C.
16 3501 (Paperwork Reduction Act), 5 U.S.C. 601 (Regulatory Flexibility Act), and 5
17 U.S.C. 504 (Equal Access to Justice Act);

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

21 (6) use the assistance of the small business advocate designated under
22 AS 46.14.300(b) in the development and dissemination of panel reports and advisory
23 opinions.

24 ARTICLE 4. LOCAL PROGRAMS.

25 Sec. 46.14.400. LOCAL AIR QUALITY CONTROL PROGRAMS. (a) With
26 the approval of the department, a municipality may establish and administer within its
27 jurisdiction a local air quality control program that operates in lieu of and is consistent
28 with all or part of the department's air quality program as established under this
29 chapter. A first or second class borough may administer an air quality control program
30 approved by the department under this subsection on an areawide basis and is not
31 subject to the restrictions for acquiring additional areawide powers specified in

1 AS 29.35.300 - 29.35.350. A third class borough may administer a local air quality
2 control program approved by the department under this subsection only in a service
3 area formed under AS 29.35.490(b) or (c).

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

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

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

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

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

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

25 (4) the procedures that must be followed by the municipality or local
26 air quality district when requesting money from the clean air protection fund to cover
27 the costs of implementing the municipality's or district's air quality program;

28 (5) the procedures that will be used by the department in approving a
29 request under (4) of this subsection and submitting it to the legislature for funding;

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

1 (e) A local air quality control program shall provide for the exemption of a
2 locally registered motor vehicle from motor vehicle emission requirements adopted
3 under AS 46.14.510 if the motor vehicle is not used within the program's jurisdiction.

4 (f) A municipality or a local air quality district administering a program under
5 this section shall administer its local air quality control program according to this
6 chapter, regulations adopted under those sections, and its cooperative agreement under
7 (d) of this section. A municipality or local air quality district's program may, upon
8 a finding by the local agency and an affirmative agreement by the department,
9 establish a more stringent requirement than the stationary source permit program
10 authorized under this chapter if public health or air quality effects warrant the
11 additional or more stringent requirement and the municipality or district has used
12 procedures ^{NO CHANGE} substantially equivalent to those required under AS 46.14.010 - 46.14.015
13 before establishing the more stringent requirement. This subsection does not prohibit
14 a municipality or local air quality control district from establishing a mobile source
15 program more stringent than the state program without making findings of public
16 health or air quality effects or using procedures substantially equivalent to those
17 required under AS 46.14.010 - 46.14.015. <sup>In this sub-section, "mobile source" does not include tank
vessels or other watercraft.</sup>

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

21 (h) Notwithstanding any other law or rule of law, the department may not
22 delegate or enable another department or government entity to establish fee rates or
23 collect fees under AS 46.14.240 or 46.14.250.

24 Sec. 46.14.410. INADEQUACY OF LOCAL PROGRAM. (a) If a
25 municipality or a local air quality district has an approved local air quality control
26 program under AS 46.14.400 and the department determines that the program is being
27 implemented in a manner that fails to meet the terms of the cooperative agreement or
28 is otherwise being inappropriately administered, the department shall give written
29 notice setting out its determination to the municipality or local air quality district.
30 Within 45 days after giving written notice, the department shall conduct a public
31 hearing on the matter. The hearing shall be recorded by any means that ensures an

1 accurate record.

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

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

18 (d) A municipality or local air quality district that has had its cooperative
19 agreement terminated may, with the department's approval, resume a local air quality
20 control program if the municipality or district agrees to comply with AS 46.14.400 and
21 with any corrective action plan required by the department.

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

30 ARTICLE 5. MISCELLANEOUS PROVISIONS.

31 Sec. 46.14.500. AIR POLLUTION FROM OUTER CONTINENTAL SHELF

1 ACTIVITIES. (a) The department shall seek delegation of authority from the federal
2 administrator to implement and enforce the terms and provisions of 42 U.S.C. 7627
3 (Clean Air Act, sec. 328) for the Pacific and Arctic Ocean areas offshore of the state.
4 The department may adopt regulations that are necessary to acquire this delegated
5 authority.

6 (b) In adopting regulations under this section, the department shall ensure that
7 facilities located within 25 miles of the seaward boundary of the state are subject to
8 the same air quality control requirements that would be applicable if the facility were
9 located in the corresponding onshore area. For purposes of this subsection, facilities
10 located within 25 miles of the seaward boundary of the state include a vessel servicing
11 or associated with the facility while at the facility or en route to or from the facility
12 and within 25 miles of the facility.

13 (c) In this section, "corresponding onshore area" means, with respect to a
14 facility located within 25 miles of the seaward boundary of the state, the onshore
15 attainment or nonattainment area that is closest to the facility, unless the commissioner
16 determines that another area with more stringent requirements relating to control and
17 abatement of air pollution may reasonably be expected to be affected by emissions
18 from the offshore facility; this determination shall be based on the potential for air
19 contaminants from the facility to reach the other onshore area and the potential of the
20 air contaminants to affect the efforts of the other onshore area to attain or maintain a
21 federal ambient air quality standard set under 42 U.S.C. 7470 - 7492 (Title I, Part C,
22 Clean Air Act) or a state equivalent.

23 Sec. 46.14.510. MOTOR VEHICLE POLLUTION. (a) When the department
24 determines that the state of knowledge and technology may allow or make appropriate
25 the control of emissions from motor vehicles to further air quality control, the
26 department may provide, by regulation, for the control of the emissions from motor
27 vehicles. The regulations may prescribe requirements for the installation and use of
28 equipment designed to reduce or eliminate emissions and for the proper maintenance
29 of this equipment.

30 (b) Unless otherwise exempted by law, a person shall maintain in operating
31 condition any element of the air pollution control system or mechanism of a motor

1 vehicle that the department, by regulation, requires to be maintained in or on the motor
2 vehicle. Failure to maintain a required system or mechanism in operating condition
3 subjects the motor vehicle's registration to suspension or cancellation. A motor
4 vehicle whose registration has been suspended or canceled under this subsection is not
5 eligible for subsequent registration until the owner or operator obtains certification
6 from the department, based on a demonstration that the air pollution control system or
7 mechanism is restored to operating condition.

8 (c) The department shall consult with the Department of Public Safety
9 regarding implementation of the motor vehicle pollution control program. The
10 Department of Public Safety shall cooperate with the department in implementing the
11 program.

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

21 Sec. 46.14.515. INSPECTION. (a) An officer or employee of the department
22 designated by the commissioner or an inspector authorized by the commissioner and
23 certified under regulations adopted under AS 46.14.140(a)(13) may, upon presentation
24 of credentials and at reasonable times with the consent of the owner or operator, enter
25 upon or through any premises of a facility regulated under this chapter to

26 (1) inspect and copy any records required to be maintained;

27 (2) inspect any source, monitoring equipment, or method required to
28 be used; or

29 (3) sample any emissions that the owner and operator of the facility is
30 required to sample.

31 (b) During an inspection under this section, the inspector shall comply with

1 applicable health and safety standards.

2 Sec. 46.14.520. CONFIDENTIALITY OF TRADE SECRETS. Records,
3 reports, and information, and parts of records, reports, and information, other than
4 emission data, in the department's possession or control are considered confidential
5 records and shall be kept confidential and in separate files if the owner and operator
6 have certified under oath to the department or authorized local program that

7 (1) public disclosure would tend to affect adversely the owner's and
8 operator's competitive position; and

9 (2) the records, reports, or information, or parts of the records, reports,
10 or information, would divulge production figures, sales figures, processes, production
11 techniques, or financial data of the owner and operator that are entitled to protection
12 as trade secrets under AS 45.50.910 - 45.50.945 (Alaska Uniform Trade Secrets Act).

13 Sec. 46.14.525. PUBLIC RECORDS. Except as provided in AS 46.14.520,
14 permits, permit applications, emissions and monitoring reports, compliance reports,
15 certifications, and monitoring, reporting, and quality assurance plans in the
16 department's possession or control are available to the public for inspection and
17 copying.

18 Sec. 46.14.530. STATE AND FEDERAL AID. (a) A municipality or local
19 air quality district with a local air quality control program may apply for, receive,
20 administer, and spend state aid for the control of air emissions or the development and
21 administration of the program if an application is first submitted to and approved by
22 the department. Subject to available money appropriated by the legislature for the
23 purpose of this section, the department may approve an application if it is consistent
24 with the terms and conditions of the applicable cooperative agreement and meets the
25 requirements of this chapter.

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

29 Sec. 46.14.540. AUTHORITY OF DEPARTMENT IN CASES OF
30 EMERGENCY. (a) When the commissioner finds that an act of God, act of war, act
31 of terrorism, or similar catastrophe necessitates emergency use of an unpermitted

1 source or emergency use of a permitted source in a manner not authorized by the
2 permit, the commissioner may waive procedural requirements of this chapter and issue
3 an order to authorize emergency use of the source. When acting under this section,
4 the commissioner shall impose conditions necessary to protect life, human health,
5 welfare, property, and the environment and may impose other conditions the
6 commissioner finds necessary and appropriate.

7 (b) An authorization issued under this section automatically terminates within
8 a reasonable time after abatement of the emergency, subject to a maximum of 30 days
9 from the date of issuance. However, the commissioner may reissue an authorization,
10 if warranted, that may remain in effect for up to another 30 days. An authorization
11 may be reissued more than once.

12 (c) A person acting under an order issued under (a) of this section is
13 considered to be acting in compliance with the operating permit program established
14 in this chapter.

15 (d) The commissioner may delegate the commissioner's authority under this
16 section to deputy commissioners and division directors in the department.

17 Sec. 46.14.550. RESPONSIBILITIES OF OWNER AND OPERATOR.
18 Notwithstanding use of the conjunctive or disjunctive in a provision of this chapter,
19 before issuance of a permit under AS 46.14.170 both the owner and operator of a
20 facility are responsible for compliance with this chapter and regulations adopted under
21 this chapter. If the owner and operator of the facility are separate persons, only one
22 person is required to discharge a specific responsibility. After issuance of a permit
23 under AS 46.14.170, only the permittee is responsible for permitted operations. The
24 permittee shall have a designated agent for service of process in the state.

25 Sec. 46.14.560. UNAVOIDABLE MALFUNCTIONS AND EMERGENCIES.
26 Excess emissions caused by an unavoidable on-site emergency, malfunction, or
27 nonroutine repairs of a source including pollution control equipment or process
28 equipment constitute an affirmative defense, when asserted under regulations adopted
29 under AS 46.14.140, to an action brought for noncompliance with a technology-based
30 emission standard. This section does not limit the department's power to enjoin the
31 emission or require corrective action. This provision is in addition to any emergency

1 or upset provision contained in an applicable requirement.

2 ARTICLE 6. GENERAL PROVISIONS.

3 Sec. 46.14.900. LIMITATIONS. This chapter does not

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

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

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

11 Sec. 46.14.990. DEFINITIONS. In this chapter,

12 (1) "air contaminant" means a regulated air contaminant or a hazardous
13 air contaminant;

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

16 (3) "ambient air quality standard" means a standard, other than an
17 emission standard, adopted under AS 46.14.010, 46.14.140, 46.14.400(f), or 42 U.S.C.
18 7409 (Clean Air Act, sec. 109);

19 (4) "construct" or "construction" means to fabricate, erect, or install, or
20 to make a physical change, that would result in emissions;

21 (5) "construction permit" means a permit under AS 46.14.130(a),
22 including all relevant exhibits, addendums, transmittal letters, compliance schedules,
23 administrative orders, emergency orders, and court orders;

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

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

28 (8) "emission limitation" and "emission standard" mean a requirement
29 established by the department or the federal administrator, other than an ambient air
30 quality standard, that limits the quantity, rate, or concentration of emission of an air
31 contaminant, including a requirement relating to the operation or maintenance of a

1 source to ensure sustained emission reduction, and design, equipment, work practice,
2 or operational standard adopted under this chapter or 42 U.S.C. 7401 - 7671q (Clean
3 Air Act);

4 (9) "facility" means

5 (A) one or more structures, buildings, installations, or properties

6 (i) that are contiguous or adjacent;

7 (ii) that are owned or operated by the same person or by
8 persons under common control; and

9 (iii) upon which is located a source or sources, including
10 sources on a vessel while the vessel is conducting business at the
11 facility or servicing or being serviced by that facility to the extent
12 required under 42 U.S.C. 7401 - 7671q (Clean Air Act) and regulations
13 adopted under those sections, but not including sources engaged in
14 propulsion of the vessel; or

15 (B) a vessel

16 (i) that is anchored or otherwise permanently or
17 temporarily stationed within a locale; and

18 (ii) upon which is located a source or sources that are
19 being used for an industrial process, not including sources engaged in
20 propulsion of the vessel;

21 (10) "federal administrator" means the administrator of the United
22 States Environmental Protection Agency;

23 (11) "fugitive emissions" means emissions of an air contaminant that
24 could not reasonably be emitted from a contaminant outlet;

25 (12) "hazardous air contaminant" means a pollutant listed in or under
26 42 U.S.C. 7412(b) (Clean Air Act, sec. 112(b));

27 (13) "local air quality control program" means a program authorized
28 under AS 46.14.400 to implement some or all of the provisions of this chapter;

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

1 (15) "operating permit" means a permit under AS 46.14.130(b),
2 including all relevant exhibits, addendums, transmittal letters, compliance schedules,
3 administrative orders, emergency orders, and court orders;

4 (16) "operator" means a person or persons who direct, control, or
5 supervise a facility or source that has the potential to emit an air contaminant to the
6 atmosphere;

7 (17) "owner" means a person or persons with a proprietary or
8 possessory interest in a facility or source that has the potential to emit an air
9 contaminant to the atmosphere;

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

14 (19) "potential to emit" means the maximum quantity of a release of
15 an air contaminant, considering a facility's physical or operational design, based on
16 continual operation of all sources within the facility for 24 hours a day, 365 days a
17 year, reduced by the effect of pollution control equipment and approved state or
18 federal limitations on the capacity of the facility's sources or the facility to emit an air
19 contaminant, including limitations such as restrictions on hours or rates of operation
20 and type or amount of material combusted, stored, or processed; "potential to emit"
21 does not include

22 (A) a one-time, accidental release of an air contaminant; or

23 (B) the fugitive emissions specifically exempted under 42
24 U.S.C. 7401 - 7671q (Clean Air Act);

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

29 (21) "regulated air contaminant" means

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

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- (B) oxides of nitrogen;
- (C) a volatile organic compound;
- (D) a pollutant that is addressed by a

- (i) standard adopted under 42 U.S.C. 7411 - 7412 (Clean Air Act, sec. 111 - 112);

- (ii) permit authorized under 42 U.S.C. 7412(g) or (j) (Clean Air Act, sec. 112(g) or (j)); or

- (iii) regulation adopted under AS 46.14.010(b)(3); and

- (E) a substance regulated under 42 U.S.C. 7671a (Clean Air Act, Sec. 602);

(22) "small business facility" means a facility that

- (A) is owned or operated by a person who employs 100 or fewer individuals;

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

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

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

(24) "TPY" means tons per year.

* Sec. 3. AS 28.10.041(a)(10) is amended to read:

(10) the vehicle is subject to a state-approved [LOCAL] emission inspection program adopted [BY MUNICIPAL ORDINANCE] under AS 46.14.400 or 46.14.510 [AS 46.03.210], and the vehicle does not meet the standards of that program, unless the vehicle uses a fuel source that does not primarily emit carbon monoxide;

* Sec. 4. AS 28.10.423 is amended to read:

Sec. 28.10.423. EMISSION CONTROL INSPECTION PROGRAM FEES. In addition to the annual registration fee specified in AS 28.10.421, a \$1 fee is imposed upon every vehicle required to be inspected under an emission control program established under AS 46.14.400 or 46.14.510 [AS 46.03.210]. This fee shall be collected at the same time and in the same manner as the registration fee.

1 * Sec. 5. AS 29.10.200 is amended by adding a new paragraph to read:

2 (51) AS 29.35.055 (local air quality control program).

3 * Sec. 6. AS 29.35 is amended by adding a new section to read:

4 Sec. 29.35.055. LOCAL AIR QUALITY CONTROL PROGRAM. A
5 municipality may establish a local air quality control program as provided in
6 AS 46.14.400 only if the municipality has obtained the consent of its governing body
7 through an ordinance authorizing the participation. This section applies to home rule
8 and general law municipalities.

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

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

12 (1) provide transportation systems;

13 (2) provide water pollution control;

14 (3) provide air pollution control in accordance with AS 46.14.400
15 [AS 46.03.140 - 46.03.230];

16 (4) license day care facilities;

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

18 * Sec. 8. AS 29.35.210(a) is amended to read:

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

21 (1) provide transportation systems;

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

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

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

27 (5) provide air pollution control under AS 46.14.400 [IN
28 ACCORDANCE WITH AS 46.03.140 - 46.03.230];

29 (6) provide water pollution control;

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

- 1 (8) provide for economic development;
- 2 (9) provide for the acquisition and construction of local service roads
- 3 and trails under AS 19.30.111 - 19.30.251;
- 4 (10) establish an emergency services communication center under
- 5 AS 29.35.130;
- 6 (11) subject to AS 28.01.010, regulate the licensing and operation of
- 7 motor vehicles and operators;
- 8 (12) engage in activities authorized under AS 29.47.460;
- 9 (13) contain, clean up, or prevent a release or threatened release of oil
- 10 or a hazardous substance, and exercise a power granted to a municipality under
- 11 AS 46.04, AS 46.08, or AS 46.09; the borough shall exercise its authority under this
- 12 paragraph in a manner that is consistent with a regional master plan prepared by the
- 13 Department of Environmental Conservation under AS 46.04.210.

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

- 15 (b) A second class borough may by ordinance exercise the following powers
- 16 on an areawide basis:
- 17 (1) provide transportation systems;
- 18 (2) license, impound, and dispose of animals;
- 19 (3) provide air pollution control under AS 46.14.400 [IN
- 20 ACCORDANCE WITH AS 46.03.140 - 46.03.230];
- 21 (4) provide water pollution control;
- 22 (5) license day care facilities.

23 * Sec. 10. AS 37.05.146(4) is amended by adding a new subparagraph to read:

- 24 (R) clean air protection fund (AS 46.14.260).

25 * Sec. 11. AS 42.05.381 is amended by adding a new subsection to read:

- 26 (g) The commission shall allow, as a necessary and reasonable expense, all
- 27 payments made to the Department of Environmental Conservation under AS 46.14.240
- 28 - 46.14.250. The commission shall allow the public utility to recover these fees
- 29 through a periodic fuel surcharge rate adjustment.

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

- 31 (a) The Department of Environmental Conservation may adopt regulations that

1 prescribe reasonable fees, and establish procedures for the collection of the fees, to
2 cover the direct costs of the following services provided by the department:

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

5 (2) certificates of inspection for motor vehicles under AS 46.14.400
6 or 46.14.510 [AIR QUALITY PERMITS UNDER AS 46.03.140 AND 46.03.160];

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

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

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

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

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

14 * Sec. 13. AS 44.46.025 is amended by adding a new subsection to read:

15 (c) The department may adopt regulations that prescribe reasonable fees to
16 cover the direct and indirect costs of air quality permit programs under AS 46.14 and
17 may establish procedures for the collection of those fees.

18 * Sec. 14. AS 44.62.330(a)(44) is amended to read:

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

22 * Sec. 15. AS 45.45.400(a) is amended to read:

23 (a) A person engaged in the business of selling used motor vehicles may not
24 transfer or assign the owner's title or interest in the used vehicle to a person who
25 resides in an area subject to a state-approved emission inspection [A
26 MUNICIPALITY THAT HAS AN AIR POLLUTION CONTROL] program
27 established under AS 46.14.400 or 46.14.510 [AS 46.03.210] and who intends to use
28 the vehicle in that area [MUNICIPALITY], unless the vehicle has a certificate of
29 compliance or noncompliance as required under the air pollution control requirements
30 applicable in that area [MUNICIPALITY].

31 * Sec. 16. AS 46.03.760(f) is amended to read:

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

8 (1) reasonable compensation in the nature of liquidated damages for
9 any adverse environmental effects caused by the violation, that shall be determined by
10 the court according to the toxicity, degradability and dispersal characteristics of the
11 substance discharged, the sensitivity of the receiving environment, and the degree to
12 which the discharge degrades existing environmental quality; for a violation relating
13 to AS 46.14, the court, in making its determination under this paragraph, shall
14 also consider the degree to which the discharge causes harm to persons or
15 property; this paragraph may not be construed to limit the right of parties other
16 than the state to recover for personal injuries or damages to their property;

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

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

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

23 * Sec. 17. AS 46.03.765 is amended to read:

24 Sec. 46.03.765. INJUNCTIONS. The superior court has jurisdiction to enjoin
25 a violation of this chapter, AS 46.04, [OR] AS 46.09, AS 46.14, or of a regulation, a
26 lawful order of the department, or permit, approval, or acceptance, or term or condition
27 of a permit, approval, or acceptance issued under this chapter, AS 46.04, [OR]
28 AS 46.09, or AS 46.14. In actions brought under this section, temporary or
29 preliminary relief may be obtained upon a showing of an imminent threat of continued
30 violation, and probable success on the merits, without the necessity of demonstrating
31 physical irreparable harm. The balance of equities in actions under this section may

1 affect the timing of compliance, but not the necessity of compliance within a
2 reasonable period of time.

3 * Sec. 18. AS 46.03.780(a) is amended to read:

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

11 * Sec. 19. AS 46.03.790(a) is amended to read:

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

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

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

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

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

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

1 * Sec. 20. AS 46.03.790 is amended by adding a new subsection to read:

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

6 * Sec. 21. AS 46.03.850(a) is amended to read:

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

14 * Sec. 22. AS 46.03.860 is amended to read:

15 Sec. 46.03.860. INSPECTION WARRANT. The department may seek search
16 warrants for the purpose of investigating actual or suspected sources of pollution or
17 contamination or to ascertain compliance or noncompliance with AS 46.14 or this
18 chapter or a regulation adopted under AS 46.14 or this chapter.

19 * Sec. 23. AS 46.03.875 is amended to read:

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

25 * Sec. 24. AS 46.03.890(b) is amended to read:

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

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

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

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

2 (8) "state agency" means a state department, commission, board or
3 other agency of the state; for the purposes of this chapter "state agency" also means
4 a local or regional air pollution control authority established under AS 46.14.400
5 [AS 46.03.210].

6 * Sec. 27. AS 46.03.140, 46.03.150, 46.03.160, 46.03.170, 46.03.180, 46.03.190, 46.03.210,
7 46.03.220, 46.03.225, 46.03.230, and 46.03.245 are repealed.

8 * Sec. 28. AS 46.14.110, enacted by sec. 2 of this Act, is repealed on the day after the day
9 the federal administrator approves the state's program under 42 U.S.C. 7661a(d) (Clean Air
10 Act, sec. 502(d)).

11 * Sec. 29. COMPLIANCE ADVISORY PANEL; INITIAL TERMS. Notwithstanding
12 AS 46.14.320, added by sec. 2 of this Act, the terms of the initial members of the compliance
13 advisory panel shall be as follows:

14 (1) the terms of the members appointed under AS 46.14.320(b)(1) shall be one
15 year;

16 (2) the terms of the members appointed under AS 46.14.320(b)(3)(A) shall be
17 three years;

18 (3) the terms of the members appointed under AS 46.14.320(b)(3)(B) and (C)
19 shall be two years.

20 * Sec. 30. REGULATIONS. The Department of Environmental Conservation may adopt
21 regulations as authorized by this Act, and other statutory authority, to implement changes
22 made by this Act. Regulations adopted under this section may not take effect until the
23 corresponding enabling statute takes effect under sec. 31 or sec. 32 of this Act.

24 * Sec. 31. Sections 1, 3 - 30, and AS 46.14.010, 46.14.015, 46.14.020, 46.14.030,
25 46.14.110, 46.14.120(a) and (c) - (e), 46.14.130(a)(1) - (3) and (5), 46.14.140, 46.14.170,
26 46.14.180, 46.14.190, 46.14.200, 46.14.215, 46.14.255, 46.14.280, 46.14.300, 46.14.310,
27 46.14.320, 46.14.400, 46.14.410, 46.14.500, 46.14.510, 46.14.515, 46.14.520, 46.14.525,
28 46.14.530, 46.14.540, 46.14.550, 46.14.560, 46.14.900, and 46.14.990, enacted by sec. 2 of
29 this Act, take effect immediately under AS 01.10.070(c).

30 * Sec. 32. AS 46.14.120(b), 46.14.130(a)(4) and (b), 46.14.150, 46.14.160, 46.14.210,
31 46.14.220, 46.14.230, 46.14.235, 46.14.240, 46.14.250, 46.14.260, 46.14.270, 46.14.275,

1 46.14.285, and 46.14.290, enacted by sec. 2 of this Act, take effect on the day after the day
2 the federal administrator approves the state program under 42 U.S.C. 7661a(d) (Clean Air Act,
3 sec. 502(d)). The commissioner shall immediately notify the lieutenant governor and the
4 revisor of statutes of the day of the federal administrator's approval.



**DEPARTMENT OF
ENVIRONMENTAL CONSERVATION**

Air Quality Management



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

EFFECTS OF 1990 AMENDMENTS

Mobile Sources

Cold Start
CO Standards
Inspections



**CLEAN UP POOR
AIR QUALITY AREAS**

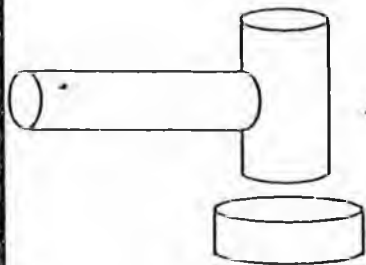
189
HAZARDOUS
AIR
POLLUTANTS

Clean Air Act Amendments

Nov. 15, 1990

State Operating Permit Program

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, SO₂, NO₂, Pb, PM, O₃)

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

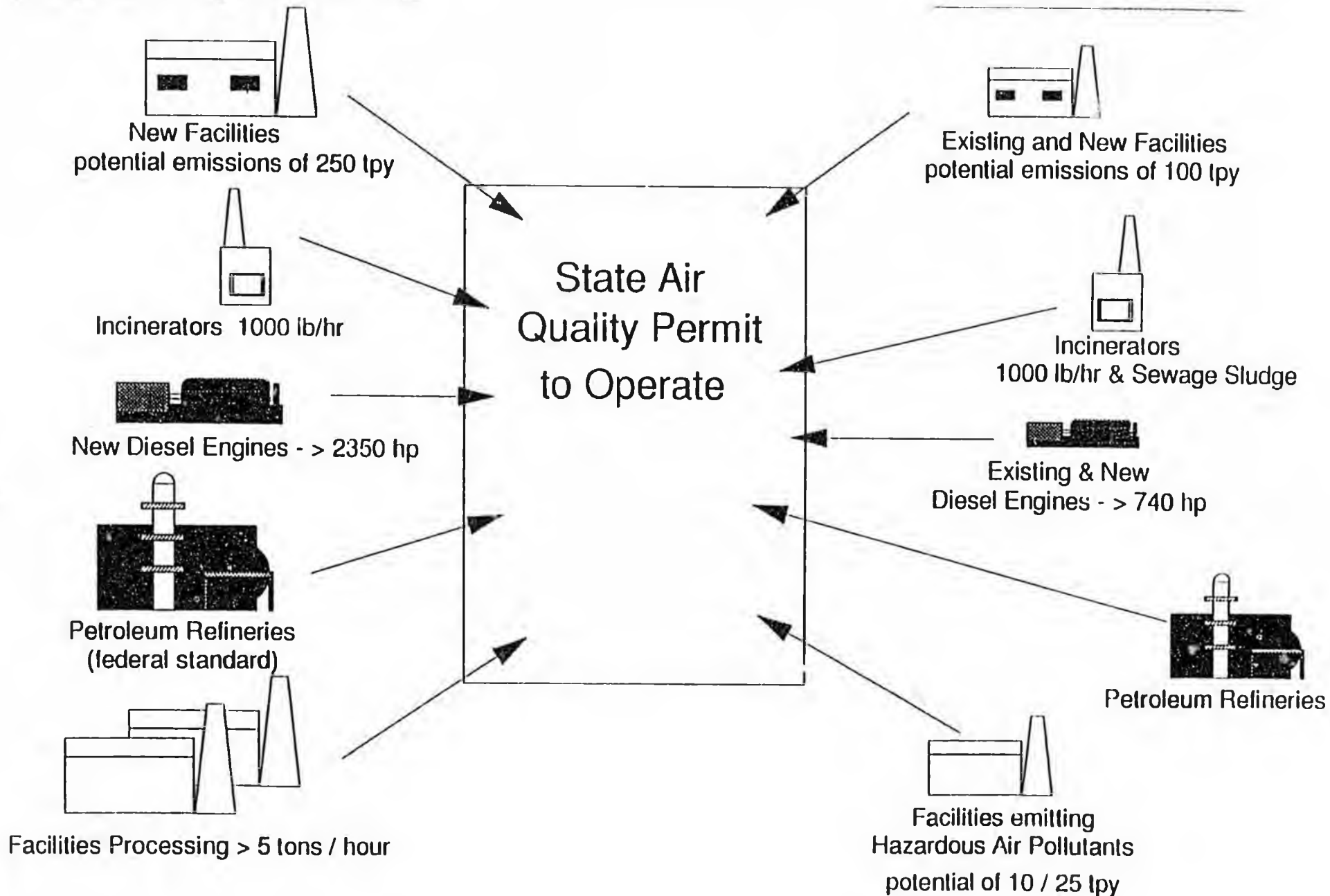
New Source Performance Standards

Implementing Technology for Hazardous Emissions

WHO NEEDS AN AIR PERMIT ?

EXISTING PERMIT PROGRAM

1990 CLEAN AIR ACT



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