

ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672

8434 SENATE RESOURCES

that time be granted.

IT IS SO ORDERED.

DATED at Fairbanks, Alaska this 14th day of January,
1993.



MARY E. GREENE
Superior Court Judge

I certify that on 1-14-93
copies of this form were sent to W. J. Walker
CLERK: W. J. Walker H. H. Heston
Jesse
Valland
Bjorkquist
Johannsen
Morford
Rubini
Kaustane
Mohentony
Jorgensen
Kihback

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. SB 87

Revision Date: February 2, 1993
Title: "...amending...Ch. 66, SLA 1991, that relate to the mental health trust..."
Sponsor: Senate Resources Committee
Requestor: Senate Resources Committee

Department Affected: Department of Law
BRU: Legal Services
Component: Mental Health Lands
COMPONENT SERIAL NO. 1421

EXPENDITURES/REVENUES:

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE FUND SOURCE:						
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FUNDING:

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA	-0-	-0-	-0-	-0-	-0-	-0-
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

Prepared by: Richard I. Peques, Director
Division: Administrative Services Division

Phone: 465-3672
Date: February 2, 1993

Approved by Commissioner: Charles E. Cole, Attorney General
Agency: Department of Law

Date: February 2, 1993

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

For _____

FISCAL NOTE

STATE OF ALASKA 1993 LEGISLATIVE SESSION

BILL NO. SB 67

Revision Date: _____ Department Affected: Natural Resources
 Title: Mental Health Trust: BRU: Resource Management
Alternative Settlement Proposal Components: Land Management
 Sponsor: Senate Resources Committee
 Requestor: _____ Component Serial No. 431

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	1,022.2	817.2	186.1	197.3	209.2	221.8
TRAVEL	7.5	6.0				
CONTRACTUAL	890.0	1,625.0	2,000.0	2,000.0	2,000.0	2,000.0
SUPPLIES	22.0	14.5				
EQUIPMENT						
LAND&STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	1,941.7	2,462.7	2,186.1	2,197.3	2,209.2	2,221.8

CAPITAL						
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REVENUE fund source:						
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FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA	1,941.7	2,462.7	2,186.1	2,197.3	2,209.2	2,221.8
Other						
TOTAL	1,941.7	2,462.7	2,186.1	2,197.3	2,209.2	2,221.8

POSITIONS:

FULL-TIME	16	11	2	2	2	2
PART-TIME	1	3				
TEMPORARY	2	2				

Estimate of current year (FY93) Impact: \$ 1941.7

ANALYSIS:
 The program impacts of this legislation are somewhat difficult to determine because of ambiguity in the wording of the legislation. It is unclear if the legislation contemplates the conveyance of unencumbered Original Trust Land to the Trust Authority or its "redesignation" as Original Trust Land on DNR status plats. We have based our analysis on the premise that the aforementioned land is to be conveyed to the Trust Authority. This interpretation seems appropriate since Sec. 2 AS 37.14.009(a)(2) allows the Trust Authority to sell, lease, exchange, or otherwise dispose of land in the trust.

Prepared by: Ron Swanson Phone: 762-2692
 Division: Land Date: 29-Jan-93
 Approved by Commissioner: Glenn A. Olds Date: 2/2/93
 Agency: Department of Natural Resources

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7400 Supplies

Mental Health Project Team	6.0	6.0
Land & Resouces	1.5	1.5
Regional Offices		
NRO	1.5	1.0
SCRO	1.5	1.0
SERO	<u>1.5</u>	<u>1.0</u>
Subtotal	12.0	10.5
TOTAL	1,621.7	2,368.8

	<u>94</u>	<u>95</u>
Personnel-Full time	11	9
Part time	1	3
Temporary	2	2

SB 67

LAND RECORD INFORMATION SECTION

	FY 94	FY 95
Personnel Services		
(1) Analyst/Programmer IV	77.0	0
(1) Analyst Programmer III	68.0	0
(1) Natural Resource Officer II	65.0	0
(1) Natural Resource Officer I	50.0	53.0
(1)(Data Processing Clerk I	<u>35.0</u>	<u>37.0</u>
Subtotal	295.0	90.0
Contractual Services		
DOA Data Processing Chargeback	<u>15.0</u>	<u>0</u>
Subtotal	15.0	0
Supplies		
Plotter, Micrographic & Office Supplies	<u>10.0</u>	<u>4.0</u>
Subtotal	10.0	4.0
TOTAL	320.0	94.0

TOTAL PROJECT COST

	FY 94	FY 95
Personnel Services		
Division of Land	727.2	727.3
LRIS	<u>295.0</u>	<u>90.0</u>
Subtotal	1,022.2	817.3
Travel		
Division of Land	7.5	6.0
LRIS	<u>0</u>	<u>0</u>
Subtotal	7.5	6.0
Contractural Services		
Division of Land	875.0	1,625.0
LRIS	<u>10.0</u>	<u>0</u>
Subtotal	890.0	1,625.0
Supplies		
Division of Land	12.0	10.5
LRIS	<u>10.0</u>	<u>4.0</u>
Subtotal	22.0	14.5
TOTAL	1,941.7	2,462.8

	FY 94			FY 95		
	Land	LRIS	Total	Land	LRIS	Total
Positions						
Full time	11	5	16	9	2	11
Part time	1		1	3		3
Temp.	2		2	2		2

OUT-YEAR COSTS

Personnel Services

	FY 96	FY 97	FY 98	FY 99
Land Manager	62.3	66.1	70.1	74.3
Cadastral Survey	<u>123.8</u>	<u>131.2</u>	<u>139.1</u>	<u>147.5</u>
Subtotal	186.1	197.3	209.2	221.8
Contractural Survey	2,000.0	2,000.0	2,000.0	2,000.0
TOTAL	2,186.1	2,197.3	2,209.2	2,221.8

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. SB 67

ANALYSIS CONTINUATION:

Enacting SB 67 as a proposed settlement of the mental health trust lands litigation will require the Department of Law to undertake some substantial effort, including:

1. Efforts to obtain court approval of the settlement. The mental health trust lands litigation is a class action lawsuit. Settlement of that lawsuit must comply with Rule 23 of the Alaska Rules of Civil Procedure. The parties may first need to draft a settlement agreement to present to the court (a settlement agreement may address terms not specifically provided for in the bill). The settlement agreement must then be presented to the court for preliminary approval--the court must determine that the settlement is fair, reasonable, and adequate. Following preliminary approval, notice of the settlement must be given to the class (in general, beneficiaries of the mental health land trust) so that they may comment to the court about the settlement. Only after notice may the court approve the settlement and dismiss the litigation.

The time and effort necessary to obtain final approval of a settlement arising from SB 67 is uncertain because it is not possible to predict what challenges may come. However, possible challenges include:

(a) that the constitutional prohibition against dedicated funds [Article IX, Sec. 7, Alaska Constitution] is violated by the provision in Sec. 4 of SB 67 [to be codified as AS 37.14.036(c)] that allocates 6% of the unrestricted general fund revenue during each fiscal year to the mental health income account, coupled with the restriction that future legislatures and governors may appropriate these amounts for other high priority public needs only if the funds are not "reasonably necessary to meet the projected operating and capital expenses of the integrated comprehensive mental health program" [Sec. 10, Ch. 66, SLA 1991, to be codified in AS 37.14].

(b) that the dedication of 6% of the unrestricted general fund revenue to the mental health income account [Sec. 4, SB 67], coupled with the reconstitution of almost one-half of the original one million acre land grant [Sec. 6, SB 67], coupled with the restrictions on appropriating amounts from that account under Sec. 10, Ch. 66, SLA 1991 [see Paragraph (a) above] may be challenged as being contrary to the public interest by persons who believe that the legislature and governor should not be restricted from appropriating public funds for other public needs if those needs are of higher priority (e.g. education, public safety, etc.). Different public interest groups will attach different priorities to the public need for different programs.

(c) that the allocation of 6% of the of the state's unrestricted general fund revenue to the mental health income account in perpetuity [Sec. 4, SB 67], coupled with the reconstitution of almost one-half of the original one million acre land grant [Sec. 6, SB 67], coupled with restrictions on appropriating "trust funds" [Sec. 10, Ch. 66, SLA 1991] is contrary to the public interest because it provides too much compensation to resolve this litigation. This claim was raised by intervenors Alaska Center for the Environment, et al. with respect to allegations that the state will overcompensate the mental health trust by reconstituting too much land under Ch.

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. SB 67

ANALYSIS CONTINUATION:

66. This "public interest" challenge could more easily be made as to the state overcompensating the mental health trust with funds under SB 67.

(d) that the transfer of any existing leases to the mental health trust [Sec. 6, SB 67, to be codified as AS 38.05.800(2)] could be challenged by the lessees. Marathon Oil Company and Union Oil Company of California have been permitted to intervene in the mental health trust land litigation to challenge the assignability of state oil and gas leases on state general grant land to the trust authority.

(e) that the combination in one bill of the reconstitution of mental health trust lands [Sec. 6, SB 67] with other substantive provisions [the remainder of SB 67] violates the constitutional provision that bills for appropriation shall be confined to appropriations [Article II, Sec. 13, Alaska Constitution]. The Alaska Center for the Environment, et al. have challenged the constitutionality of Ch. 66 on the grounds that this constitutional provision extends to bills that affect the status of public lands--such as reconstitution of land into the mental health trust.

(f) other challenges may be made by parties opposed to SB 67 as a resolution of the mental health trust lands litigation.

2. Enactment of SB 67 may result in litigation with the mental health trust plaintiffs and third-parties who hold interests in former trust lands over whether particular parcels are suitable for being reconstituted into the trust. The provisions in Sec. 6, SB 67 are ambiguous because the bill does not explicitly validate existing interests in former trust lands nor does it identify the specific parcels that will be reconstituted--e.g. trust land that "has not been conveyed or encumbered by the state" is subject to conflicting interpretations.

The settlement agreement negotiated under Ch. 66, SLA 1991 that provides specifically as to parcels which will be reconstituted will not serve SB 67. Under Ch. 66, SLA 1991 the parties negotiated parcels to be reconstituted with the understanding that for any former trust parcel not reconstituted, the state would provide substitute land of comparable character and equal fair market value--the value obtained by the trust was the same regardless of whether the former trust parcel was reconstituted. Under SB 67, the trust is given an all or nothing choice--reconstitute the former trust parcel or receive nothing. Plaintiffs are likely to claim that any parcel arguably described in Sec. 6, SB 67 for reconstituting must be reconstituted regardless of the impact on the state or third-party interests.

The Department of Law currently receives \$589,500 in general funds, and \$1,000,000 in mental health trust funds to implement the Ch. 66, SLA 1991 settlement, including reconstituting the mental health lands trust within the terms of the settlement. The general funds are used to pay for two attorneys, one paraprofessional, and one clerical employee, who carry-out the state's responsibilities under Ch. 66. The mental health trust funds are provided to the plaintiffs who have accepted the settlement so that they can carry-out their responsibilities under Ch. 66.

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. SB 67

ANALYSIS CONTINUATION:

Because of the uncertainties described above, and because of the potential for continued legal challenges, we do not believe that the current efforts of either the state or the plaintiffs, will be reduced if SB 67 is adopted. This would cause existing resources to be redirected to implement and defend the new law. We cannot say if the bill would cause additional costs due to the uncertainty of potential litigation.

SB

77

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

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

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

March 2, 1993

SUBJECT: CSSB 77(Resources); Intensive management of big game

TO: Senator Bert Sharp

FROM: George Utermöhle *GU*
Legislative Counsel

You have asked two questions in regard to CSSB 77(Resources); An Act relating to the powers of the Board of Game and to intensive management of big game to achieve higher sustained yield for human harvest.

ONE; In the context of CSSB 77(Resources), what do "shall" and "may" mean?

Use of the word "shall" means to impose a duty on someone. Manual of Legislative Drafting, Legislative Affairs Agency, p. 51, 1993. "Shall" denotes a mandatory intent. Fowler v. Anchorage, 583 P.2d 817 (Alaska 1978).

Use of the word "may" means to grant a privilege or discretionary power. Use of the phrase "may not" means to impose a prohibition upon someone. Manual of Legislative Drafting, Legislative Affairs Agency, p. 51, 1993.

In the context of AS 16.05.255(a) as amended by Section 1 of CSSB 77(Resources), the replacement of the word "may" by the word "shall" converts the discretionary power of the Board of Game to adopt regulations for the management of game and for intensive management to a duty to adopt regulations for those purposes.

In the context of the new AS 16.05.255(e), added by Section 2 of CSSB 77(Resources), the phrase "may not" is used to prohibit the board from adopting regulations to significantly reduce the taking of certain game populations unless the board has previously adopted regulations providing for intensive management of the population. Except in certain situations where intensive management is not a viable management option, the board has a duty to adopt regulations providing for the intensive management of a big game population before the board is allowed to reduce the harvest of the population through the board's traditional powers under AS 16.05.255(a).

Senator Bert Sharp
March 2, 1993
Page 2

TWO; Does CSSB 77(Resources) change the power of the Governor in regard to the adoption of regulations by the Board of Game?

The answer is no. Whatever power the Governor has in regard to the adoption of regulations by the Board of Game, whether through AS 16.05.270^{1/}, the budgeting process, the power of persuasion, or otherwise, is unchanged by the provisions of CSSB 77(Resources).

If I may be of further assistance, please advise.

GU:lmb
93-056.lmb

^{1/} AS 16.05.270 states:

DELEGATION OF AUTHORITY TO COMMISSIONER. For the purpose of administering AS 16.05.251 and 16.05.255, each board may delegate authority to the commissioner to act in its behalf. If there is a conflict between the board and the commissioner on proposed regulations, public hearings shall be held concerning the issues in question. If, after the public hearings, the board and the commissioner continue to disagree, the issue shall be certified in writing by the board and the commissioner to the governor who shall make a decision. The decision of the governor is final.

DEPARTMENT OF FISH AND GAME
POSITION PAPER

Bill No: SB 77 (1/29/93)

Sponsor: Senators Sharp, Frank, Taylor

Division: Wildlife Conservation

Bill Title: An Act relating to the powers of the Board of Game and to intensive game management to achieve higher sustained yield for human harvest.

Department Position: Neutral pending significant amendments.

Background/Legislative Intent: The purpose of this bill is to mandate intensive management of declining game populations to enhance consumptive use opportunities.

Analysis of Bill/Program Effects: As written, this bill would direct the board and require the department to undertake intensive management programs, even when such programs are not needed or desirable. Currently, both the board and department already have the authority and discretion to use intensive management to enhance game populations. By statutorily eliminating flexibility, this bill could compromise the biological basis for decision-making and make the board process extremely cumbersome.

Amendments Proposed:

Sec. 1. (page 1, lines 5-10)

(a) The Board of Game shall adopt regulations it considers advisable in accordance with AS 44.62 (Administrative Procedure Act) to provide for the management of game, and for intensive management of identified big game populations [SPECIES] to maintain or restore high levels of [GAME POPULATIONS TO ACHIEVE HIGHER] sustained yield for human harvest where the board has determined that consumptive use of those big game populations [SPECIES] is the preferred use....

(This amendment alters wording to parallel that suggested elsewhere in the bill and clarifies the intent to focus intensive management on identified populations of big game rather than species on a statewide basis.)

Sec. 2. (page 3, lines 3-11)

(e) The Board of Game may not significantly reduce the taking of an identified big game population under this section unless the board has previously considered [ADOPTED REGULATIONS] providing for the use of intensive management to increase the take of the identified big game population for human harvest consistent with (a)(11) of this section. After considering [ADOPTING REGULATIONS] providing for intensive management of an identified big game population subject to this subsection, the board may consider and adopt regulations relating to development or regulation of access to the population

and to management of the population by customary adjustments in seasons, bag limits, open and closed areas, methods and means, or by other customary means authorized under (a) of this section.

(Unless this bill is amended, hundreds of regulatory proposals sent to the board annually will not be able to be considered or adopted unless a companion proposal is also submitted dealing with intensive management. The resulting burden on the board, public and department would overload the regulatory process. This amendment would require the Board of Game to consider, rather than adopt, intensive management before a significant restriction in harvest of a big game population is imposed. This amendment would also preserve the flexibility of the board and department in making customary adjustments in seasons, bag limits, open and closed areas, methods and means, access, etc. in those cases where "intensive management" of a game population would be inappropriate, ineffective, or restricted by a federal or private landowner.)

Example 1: On Admiralty Island, the habitat is prime and there is no significant predation on black-tailed deer. If the deer population crashed due to a severe winter, the only appropriate action to speed recovery may be to significantly reduce human harvest. As written, however, SB 77 would prevent a reduction in season or bag limit to aid recovery.

Example 2: Game populations of many species (e.g., caribou, ptarmigan, grouse, hares, lynx, muskrats) are cyclic and not always clearly driven by food availability or predation. Some of these populations are managed primarily by monitoring them and regulating human harvest. As written, SB 77 would prevent regulation of harvest until regulations for "intensive management" are adopted, even though no "intensive management" technique may be effective or appropriate.)

Commissioner's Signature

Date

2/10/93

SPONSOR STATEMENT

SB-77

Senator Bert Sharp

The primary thrust of SB-77 is to provide clear legislative direction to the Board of Game in regard to priority management goals and mission of the Department of Fish and Game particularly in the management of the larger species of game. Recent political actions accentuate a dire need for a strong legislative mandate.

For close to 30 years, the mission of the Board of Game and the Department of Fish and Game has gradually become distorted by parochial pressures, and the result has been a steady decline in the populations of the game resource. The value and use of biologically sound aggressive scientific management has been severely eroded, resulting with Alaska's current game management policies that manage people, not the resource.

The management process presently employs only passive techniques such as shortening hunting seasons, changing methods and means, permit-only hunts, just flat out closing seasons entirely; each of which have resulted in taking away the hunting opportunities for vast numbers of Alaskans.

The stark reality is that every reduction in hunting seasons without corresponding reductions of predators has in fact been a re-allocation of the resource from people to predator.

These past passive management actions have created the current situation where the Alaskan people harvest 4 to 5 percent of the game, while predators take 70 to 80 percent.

Time and time again surveys and studies of game populations have revealed that during the first 30 days after calving season up to 90

percent of the new born are gone. Do the mothers suddenly abandon them; do they starve; does a plague decimate only the newborn? The answer is none of the above. The answer is the same today as it was 5 years ago or 10 years ago or 20 years ago. Predators are very selective and efficient in killing newborn caribou and moose. Absolutely no question about it. We've literally spent tens of millions of dollars doing population surveys and watching it happen.

The lack of a clear legislative mandate encourages Administration, the Board and the Department to play it safe by continually needing just a couple more years to obtain updated studies to support any proposed change from the passive management to effective intensive management action.

There has been very few uses of controlled burns or other proven habitat enhancement methods.

Today's volatile problem of allocating existing game resources could be minimized and in many cases eliminated by increasing game populations up to historically proven maximum sustainable levels.

Adequate game stock is the common sense answer to solving current personal use, subsistence and sport hunting needs. We have allowed ourselves to become divided by quarreling over an ever declining game resource. Many Alaskans have personally watched the gradual decline of moose populations to precarious levels. I personally have witnessed this happen in an area from lower Birch Creek up the Yukon to the Nation, Kandik and Charlie River Drainages, over into the Forty Mile country, up and down the entire Tanana River Drainage and into the Denali Paxon area.

These areas were teeming with Moose in the late 50's and through the 60's. Why, because we inherited high game stocks from the Federal Government that had a super aggressive predator control system, and reacted in a timely manner to the beginning of a downward trend.

This bill states a clear legislative mandate to mark the course and set a clear goal of aggressive game management for the Board and Department. It requires the maintenance of the State's game resource at a high sustainable yield level.

Alaska long ago took this course in the management of its commercial fisheries that put dollars into fishermen's pockets. Let's

do the same to put meat into the cooking pots of thousands of Alaskans.

This resource has the potential to provide hundred of millions of dollars in consumptive use value as well as contributing to meeting cultural needs for the people throughout Alaska. I ask for your support of this legislative effort. Thank you Mr. Chairman and members of this Committee for the opportunity to present this legislation.

SECTIONAL ANALYSIS

SB - 77

SECTION 1. AS 16.05.255(a) : is amended to provide for game management, and to include intensive management of game populations to achieve higher yield for human harvest. This would target areas where the Board determined that consumptive use was the preferred use of that area.

SECTION 1. AS 16.05.255(a)(11): is added to require the Department of Fish and Game to conduct intensive management programs to restore the productivity of a game population necessary to achieve human consumptive goals of the Board in areas where the Board has determined;

(A) game populations are declining and would, or are, resulting in the reduction of human harvest of the game population;

(B) it is feasible that there is an enhancement of productivity of game population; and

(C) intensive management is justified by the expected benefits to human consumptive use of the game population.

SECTION 2. AS 16.05.255(e): is added to prohibit the Board of Game from significantly reducing the taking of a game population without providing for intensive management of the population. After providing for the intensive management of the game population, the board may adopt other regulations relating to the game population.

SECTION 2. AS 16.05.255(f): is added to define the term "intensive management.:

FISCAL NOTE

BILL NO. SB 77

STATE OF ALASKA
1993 LEGISLATIVE SESSION

Revision Date: _____

Department Affected: Fish and Game

Title: An Act relating to the powers of the Board of

BRU: Wildlife Conservation

Game and to intensive game management

Component: Wildlife Conservation

Sponsor: Senator Sharp

Requestor: Senate Resources

COMPONENT SERIAL NO. 0473

EXPENDITURES/REVENUES:

(Thousands of Dollars)

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE:	0	0	0	0	0	0
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FUNDING:

(Thousands of Dollars)

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
Other	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

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

ANALYSIS: (Attach a separate page if necessary.)

Actual costs of implementing a given "intensive management" program will be considerable and cannot be estimated in advance.

Prepared By: Larry Jones

Phone: 465-6085

Division: Administration

Date: February 9, 1993

Approved by Commissioner: *[Signature]*

Agency: Department of Fish and Game

Date: 2/10/93

PREPARER TO PROVIDE

OFFICE

8-LS02760
Utermohle
2/23/93

CS FOR SENATE BILL NO. 77()
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): SENATORS SHARP, Frank, Taylor, Miller

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the powers of the Board of Game and to intensive
2 management of big game to achieve higher sustained yield for human harvest."

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

4 * Section 1. AS 16.05.255(a) is amended to read:

5 (a) The Board of Game shall [MAY] adopt regulations under [IT
6 CONSIDERS ADVISABLE IN ACCORDANCE WITH] AS 44.62 (Administrative
7 Procedure Act) to provide for the management of game, and for intensive
8 management of identified big game populations to maintain or restore high levels
9 of sustained yield for human harvest where the board has determined that
10 consumptive use of those big game populations is the preferred use. by [FOR]

11 (1) setting apart game reserve areas, refuges, and sanctuaries in the
12 water or on the land of the state over which it has jurisdiction, subject to the approval
13 of the legislature;

14 (2) establishing open and closed seasons and areas for the taking of

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game;

(3) establishing the means and methods employed in the pursuit, capture, and transport of game, including regulations, consistent with resource conservation and development goals, establishing means and methods that may be employed by persons with physical disabilities;

(4) setting quotas, bag limits, harvest levels, and sex, age, and size limitations on the taking of game;

(5) classifying game as game birds, song birds, big game animals, fur bearing animals, predators, or other categories;

(6) methods, means, and harvest levels necessary to control predation and competition among game in the state;

(7) watershed and habitat improvement, and management, conservation, protection, use, disposal, propagation, and stocking of game;

(8) prohibiting the live capture, possession, transport, or release of native or exotic game or their eggs;

(9) establishing the times and dates during which the issuance of game licenses, permits, and registrations and the transfer of permits and registrations between registration areas and game management units or subunits is allowed;

(10) regulating sport hunting and subsistence hunting as needed for the conservation, development, and utilization of game;

(11) requiring the department, within the department's ability, to conduct intensive management programs to restore the abundance or productivity of a big game population as necessary to achieve human consumptive use goals of the board in an area where the board has determined that

(A) depletion of the big game population or reduction of the productivity of the big game population has occurred and may result in a significant reduction in the allowable human harvest of the big game population; and

(B) enhancement of abundance or productivity of the big game population is feasible.

* Sec. 2. AS 16.05.255 is amended by adding new subsections to read:

1 (e) The Board of Game may not significantly reduce the taking of an identified
2 big game population under this section unless the board has previously adopted
3 regulations providing for the use of intensive management to increase the take of the
4 identified big game population for human harvest consistent with (a)(11) of this
5 section. Except in areas where the board or department has determined that intensive
6 management would be ineffective or that intensive management would be inappropriate
7 due to land ownership patterns, the board shall first adopt regulations providing for
8 intensive management of a big game population subject to this subsection, before the
9 board may reduce the taking of the population by adopting regulations relating to
10 development or regulation of access to the population and to management of the
11 population by customary adjustments in seasons, bag limits, open and closed areas,
12 methods and means, or by other customary means authorized under (a) of this section.

13 (f) In this section,

14 (1) "intensive management" means management of a big game
15 population to enhance, extend, and develop the big game population to maintain high
16 levels or provide for higher levels of human harvest in accordance with the sustained
17 yield principle, including control of predation and prescribed or planned use of fire and
18 other habitat improvement techniques;

19 (2) "sustained yield" means the achievement and maintenance in
20 perpetuity of a high level of annual or regular periodic human harvest of game
21 resources of the state, consistent with multiple use, at harvest levels that do not
22 significantly impair the productivity of the game resource or game habitat.

SB

90



SENATOR LOREN LEMAN

Northwest Anchorage

3111 "C" Street Anchorage, AK 99503 561-7614 During Session: State Capitol Juneau, AK 99801 465-2095

SPONSOR STATEMENT

SB90: "An Act clarifying powers and duties of state officials in relation to a disaster emergency caused by a catastrophic oil discharge or the release of a hazardous substance."

PROPOSAL

SB90 clarifies the governor's authority to declare a disaster emergency involving a catastrophic oil discharge and the response by the departments of environmental conservation and military and veterans' affairs.

It also would allow either the commissioner of environmental conservation or the commissioner of military and veterans' affairs to ask the governor to find that an actual or imminent catastrophic oil discharge constitutes an emergency under AS 26.23.

This bill is introduced at the request of the Department of Military and Veterans Affairs in cooperation with the Department of Environmental Conservation.

HISTORY

Many statute changes were made as a result of the Exxon Valdez oil spill. AS 26.23.020 and AS 46.04.080(a) were amended by the legislature in 1990. These amendments created a conflict with respect to whose authority it is to act under AS 46.04.080(a). The departments entered into a Memorandum of Agreement on January 8, 1992, as a method of complying with the statutes. This bill will complete the necessary changes.

MEMORANDUM OF AGREEMENT
BETWEEN THE

STATE OF ALASKA
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
DIVISION OF SPILL PREVENTION AND RESPONSE

AND THE

STATE OF ALASKA
DEPARTMENT OF MILITARY AND VETERANS AFFAIRS
DIVISION OF EMERGENCY SERVICES

This agreement is effective the latest date of approving signature, by and between the Department of Environmental Conservation, Division of Spill Prevention and Response, hereinafter referred to as the "DEC/DSPAR" and the Department of Military and Veterans Affairs, Division of Emergency Services, hereinafter referred to as the "DMVA/DES."

RECITALS

- A. Pursuant to AS 46.03.020, the DEC/DSPAR, acting by and through its Commissioner, may enter into agreements.
- B. Pursuant to AS 26.23.040(e)(9) & (11), the DMVA/DES, acting by and through its Commissioner, may enter into agreements.
- C. The DMVA/DES has statutory responsibility for disaster emergency planning and management [AS 26.23.040].
- D. The DEC/DSPAR has statutory responsibility for response planning and management for releases of hazardous substances, including oil [AS 46.03, 46.04, 46.08, 46.09, 46.13].
- E. To the extent that an actual or imminent release of oil or a hazardous substance constitutes a real or potential disaster emergency, the DEC/DSPAR and the DMVA/DES shall coordinate their statutory responsibilities [AS 26.23.195, 26.23.215, 46.04.080 & 46.09.030].

Therefore, in consideration of this mutual interest to provide integrated response to real or potential disaster emergency situations, both parties agree to the following:

AN OPERATIONAL STATEMENT

I. Background and Objectives

Actual or imminent releases of hazardous substances, to include both crude and non-crude oil, (hereinafter referred to as "releases"), have the potential for causing significant damage, hardship suffering, and/or loss of life. Releases may be catastrophic in their effect on natural

resources or the environment, without being considered a disaster emergency, as defined in Alaska Statute 26.23.900(2). However, it is envisioned that from time to time releases will occur which constitute a disaster emergency. The Commissioners of the DEC and the DMVA will coordinate to determine that a release constitutes a disaster emergency under AS 26.23 and may request the governor to declare a disaster emergency. If a disaster emergency is declared, the Governor will appoint a State Coordinating Officer (SCO) to coordinate all State disaster assistance activities.

The DMVA/DES is the agency designated and authorized by the Governor's promulgation of the State Disaster Emergency Operations Plan (hereinafter referred to as the State EOP), to coordinate statewide disaster activities, determine the severity and magnitude of pending destruction by catastrophic events, and institute a gubernatorial declaration of disaster emergency.

The DEC/DSPAR is the agency designated in the State Master Oil and Hazardous Substance Discharge Prevention and Contingency Annex (hereinafter referred to as the State Master Plan) to the State EOP, to provide the State On Scene Coordinator (SOSC), who is responsible for ensuring responses to releases are adequate. The SOSC commands the State's release incident command system (ICS) and is responsible for coordinating the State's response activities to releases according to the State Master Plan.

During a response to release incidents that pose imminent threat to life and/or private property, DEC/DSPAR and DMVA/DES agree to augment local efforts essential to: accommodate assessment of potential damage; preparation planning for evacuation of the threatened public; management of disaster emergency expenses; and tasking, as necessary, to other State departments and agencies to provide assistance as stipulated in the State EOP.

Additionally, pursuant to the State Master Plan, the DMVA/DES serves to augment the State On Scene Coordinator (SOSC).

In that the DMVA/DES can provide substantial assistance to DEC/DSPAR during non-disaster emergency releases, and DEC/DSPAR can likewise assist DMVA/DES in non-release disaster emergencies, arrangements to formalize mutual support is essential.

DEC/DSPAR and DMVA/DES will jointly propose statutory changes as required, to clarify the relationships established pursuant to this agreement.

<u>II. Responsible Officers</u>	<u>DEC/DSPAR</u>	<u>DMVA/DES</u>
Signatory Authority	Commissioner	Commissioner
Authorized agency representatives: Cooperative relationships and program responsibility	Director	Director
Agency functional representatives: Statewide Coordination	Spill Prevention & Planning Manager	Emergency Services Manager
	Chief, Spill Response Office	Chief of Logistics

The above personnel will designate alternates in their absence and inform their counterparts in the other agency as to the alternate's name, position, and office and home phones.

III. General Provisions

Either agency may request assistance from the other provided administrative arrangements are set forth for proper reimbursement of incurred expenditures by the requesting agency. The services provided will be based on each agency's existing capabilities and limitations at the time of the request, to include those obtainable under formal contract and/or through a continuing reimbursable services agreement.

A. DMVA/DES Participation and Support To Non-Disaster Emergency Release Actions

1. Upon notification and request for a DMVA/DES representative at a release scene, travel and per diem will be provided by DEC/DSPAR in a manner typically provided their work force.
2. Primarily, the DMVA/DES representative will coordinate with the DEC/DSPAR Incident Commander in matters of logistics support, evacuation plan development, and interface between other State public safety agencies and support groups for assistance to the general public.
3. If a non-disaster emergency release poses an imminent threat of widespread or severe damage, injury or loss of life or property, the Commissioners of the DEC and the DMVA will coordinate to determine if the release constitutes a disaster emergency and may request the Governor to declare a disaster emergency.

B. DEC/DSPAR and DMVA/DES Relationship During a Declared Release Disaster Emergency

1. The SCO appointed by the Governor will serve as the incident commander for the disaster emergency.
2. The SOSC designated by DEC/DSPAR will be the incident commander for release response and regulatory activities.
3. The SOSC will coordinate response activities with the SCO pursuant to the basic plan.

C. DEC/DSPAR Participation and Support to Non-Release Disaster Emergencies

1. Upon notification and request for DEC/DSPAR support to non-release disaster emergencies, DEC/DSPAR capability will be provided to the extent practical and within its qualifications to perform services.
2. Contingency stocks of equipment and supplies will be made available, to the extent that they do not interfere with actual release operations being conducted at the time of the request.

D. Special Provisions

1. Refurbishment of equipment used during emergency response actions is reimbursable.
2. Warehousing of equipment obtained during emergency activities will be made available by the borrowing agency, to the extent possible.
3. DEC/DSPAR will collocate selected personnel with DMVA/DES to facilitate emergency response planning and coordination pursuant to this agreement.

IV. Term of Agreement

This mutual support agreement may be rewritten by mutual consent, at any time, to amend or modify its provisions. It shall remain in force until such time as either agency requests termination.

Nothing in this agreement shall obligate any party to the expenditure of funds, or for future payments of money, in excess of appropriations authorized by law.

William C. ...

Commissioner
Department of Military and
Veterans Affairs

8 Jan 92

Date

David A. ...

Commissioner
Department of Environmental
Conservation

8 Jan '92

Date

Charles E. Cole

Charles E. Cole
Attorney General

January 8, 1992

Date

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. 53-72

Revision Date: _____ Dept. Affected: DMVA
 Title: An act clarifying powers and duties of state officials in relation to disaster emergency BRU: Disaster Planning & Control
 Component: Disaster Planning & Control
 Sponsor: Sen. Lehman
 Requestor: Sen. Lehman COMPONENT SERIAL NO. 1808

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	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>

CAPITAL						
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REVENUE FUND SOURCE:						
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FUNDING:

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

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

ANALYSIS: (Attach a separate page if necessary)

Zero fiscal impact

Prepared by: Jeff Morrison, Director
 Division: Administrative & Support Services
 Approved by Commissioner: Morrison for Hugh L. Cox III
 Agency: DMVA

Phone: 465-4730
 Date: 5 Feb 93
 Date: 2/5/93

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For further distribution information

DEPARTMENT OF MILITARY AND VETERANS AFFAIRS
POSITION PAPER

For: An act clarifying powers and duties of state officials in relation to a disaster emergency caused by a catastrophic oil discharge or the release of a hazardous substance.

The purpose of this legislation is to clarify an ambiguity within existing statutes regarding disaster emergencies emanating from catastrophic oil releases. There is an apparent conflict between two titles of Alaska Statutes, AS 26, and AS 46.

The Department of Military and Veterans Affairs is charged with responding to disaster emergencies declared by the governor, receiving their authority from AS 26. The Department of Environmental Conservation is charged with responding to catastrophic oil releases, receiving their authority from AS 46. When a catastrophic oil release results in a disaster emergency which threatens life or property, the statutes appear to conflict.

AS 26.23.020 establishes gubernatorial responsibility for meeting the dangers presented by all disasters, including those caused by catastrophic oil releases which endanger life and property. It requires that the governor declare a condition of disaster emergency by proclamation to activate appropriate response and recovery efforts. The disaster declaration constitutes the authority for the deployment and use of state resources to cope with the disaster.

AS 46.04.080(a) states, however, that the "actual of imminent occurrence of a catastrophic oil discharge constitutes a disaster emergency under AS 26.23 without a declaration of disaster by the governor under AS 26.23." In this case, the executive decision making process is subverted, the authority of the governor to take action under AS 26.23 is unclear, and the responsibilities of the Departments of Military and Veterans Affairs and Environmental Conservation are confused.

Both departments experienced problems implementing the statute as written into their respective emergency plans. The commissioners of the two departments resolved this issue by Memorandum of Agreement dated January 8, 1992 (copy attached). The language proposed for statutory change would seek to remove the apparent inconsistency between AS 26 and AS 46 by changing AS 46.04.080(a).

Hazardous substance releases are far more life threatening than are oil discharges. The current language of AS 46.09.030 addresses the situation in which hazardous substance releases constitute disaster emergencies. This language presents no conflicts with AS 26.23, and is used as a model for the language offered as a replacement for AS 46.04.080(a). Section 1 of the bill addresses this clarification.

Section 2 of the bill addresses a minor housekeeping issue in the statutes. The current language of AS 46.09.030 reads that the director of the division of emergency services may request the governor to declare a disaster, rather than the Commissioner of the Department of Military and Veterans Affairs. Section 2 changes the law to replace the director of emergency services with the commissioner of military and veterans affairs. The language on lines 14-18 on page 2 of the bill are technical changes suggested by the bill drafter to conform to current drafting style

Hugh L. Cox III
for Hugh L. Cox III, Commissioner

Date: 2/5/93

[File: Leman2]

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. SB 90

Revision Date: _____
Title: Oil and Hazardous Substance
Disaster Emergencies
Sponsor: Senator Leman
Requestor: Senate Oil & Gas

Department Affected: Environmental
Conservation
BRU: Spill Prevention & Response
Component: Spill Response Office

COMPONENT SERIAL NO. 1429

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

CAPITAL						
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REVENUE						
FUND SOURCE:						

FUNDING:

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

POSITIONS: NONE

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME	0.0	0.0	0.0	0.0	0.0	0.0
TEMPORARY	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of current year (FY93) impact: 5 NONE

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Janice Adair
Division: Commissioner's Office

Phone: 465-5010
Date: 2/9/93

Approved by Commissioner: *Janice Adair*
Agency: Department of Environmental Conservation

Date: 2/10/93

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



Department of Environmental Conservation

Position Paper

Bill No: Senate Bill 90

Approved: *John A. Sandor*

Name: John A. Sandor

Title: Commissioner

Date: February 10, 1993

Bill Title: Disaster Emergencies

Senate Bill 90 clarifies how a release or imminent release of oil or a hazardous substance would be declared a disaster emergency by the Governor, and thus deploying the state's resources to cope with the situation. It would codify a Memorandum of Agreement dated January 8, 1992 entered into by the Commissioners of DEC and the Department of Military and Veteran's Affairs.

The Department of Environmental Conservation supports the legislation.

For further information contact: *Janice Adair*
Assistant Commissioner/Legislative Liaison
465-5010

SB

103

Alaska Forest Association, Inc.



111 STEDMAN SUITE 200
KETCHIKAN, ALASKA 99901-6599
Phone 907-225-6114
FAX 907-225-5920

Alaska Forest Association Statement on Senate Bill 103 Senate Resources Committee February 17, 1993

The Alaska Forest Association participated in lengthy work sessions on a clean air bill last session with DEC, industry groups and other interested parties. Although much progress was made we did not reach final agreement and the bill failed.

Unfortunately, the Alaska Forest Association was unable to participate in the Citizens Advisory Group that worked on the bill last Fall. However, we did follow the group's work through communication with the Producer's Council and the Department of Environmental Conservation. We did not see the final product until it was presented in January in the Governor's Conference Room.

We were disappointed to learn that DEC did not follow the process that the agency had said it would follow after the end of the 1992 Legislature. DEC had agreed to use the negotiated bill as the starting point for the group's effort. Instead, the working group began the process from square one.

There are several issues that were dealt with last year in HB 377 and SB 383 that are not covered by the working group bill. Restricting the State to federal standards with provisions to adopt more stringent standards is one example of an issue that is not resolved in SB 103. Leaving a variety of issues to DEC discretion through rulemaking is another example. The use of discretion in rulemaking is often an invitation to future litigation.

The federal standards establish a level playing field for industries throughout the country. If Alaska's situation requires more stringent standards then the legislature should craft a defined procedure for the adoption of more stringent standards based on science and peer review. This issue was taken care of in Section 46.14.010 of last year's bills.

The Alaska Forest Association recommends that the Senate Resources Committee review this and other issues dealt with in last year's negotiated bill that are not covered in the advisory committee's work. We in no way want to minimize the committees' efforts. The Alaska Forest Association feels the job done by the advisory committee was useful and productive. Our concerns lie more with what is not covered in this bill than what is covered.

DRAFT AIR QUALITY PERMIT BILL

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

SUMMARY of the 1990 CLEAN AIR ACT

Prepared
September 16, 1992
by
Alaska Department of Environmental Conservation

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

TITLE I - AIR POLLUTION PREVENTION AND CONTROL

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

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

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

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

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

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

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

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

TITLE II - NATIONAL EMISSION STANDARDS ACT

Part A - Motor Vehicle Emission Standards

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

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

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

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

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

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

TITLE III - GENERAL

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

TITLE IV - ACID DEPOSITION CONTROL

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

TITLE V - PERMITS

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

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

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

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

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

TITLE VI - STRATOSPHERIC OZONE PROTECTION

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

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

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

Department of Environmental Conservation
410 Willoughby Avenue, Suite 105
Juneau, Alaska 99801-1795

AIR QUALITY LEGISLATIVE WORKING COMMITTEE

February 2, 1993

The Honorable Senator Mike Miller
The Honorable Representative Kay Brown
Alaska State Legislature
Box V
Juneau, AK 99811

Dear Senator Miller and Representative Brown:

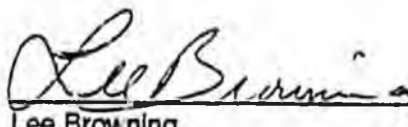
Since the citizen Air Quality Legislative Working Committee's draft legislation was submitted, some questions regarding the Working Committee's work effort have come to our attention. In particular, the purpose of this letter is to clarify certain aspects of the Working Committee's position as it relates to the state's ability to adopt regulatory standards more stringent than federal standards or to regulate a source otherwise unregulated by the federal government.

In order to resolve any potential ambiguity or misunderstanding about the Air Quality Legislative Working Committee's view of this issue, we want you to know that this issue was the subject of many lengthy discussions and, in the Working Committee's view, was adequately addressed by the Working Committee. After substantial debate, the Working Committee members adopted a unanimous position in support of the right to enact standards more stringent than federal standards or to regulate a source that may be otherwise unregulated by the department, supported by technically and scientifically sound analysis subject to an open, public process.

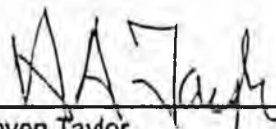
During the most recent meeting of the Working Committee, we revisited this issue and reaffirmed our previous position. At the same time, discussions of the Working Committee brought to light the concerns of some members that permit standards and emissions limitations should be implemented in a manner that ensures a fully public process. During our discussions it was noted that the proposed AS 46.03.156(a) specifically requires that "the department shall adopt regulations to address all substantive and procedural elements of the emission control permit program not addressed in statute [and that] regulations must include . . . standard permit conditions including conditions for emission standards and limitation." Notwithstanding this clear directive, the Working Committee will continue to address the best mechanisms to ensure that permit restrictions are subject to appropriate technical review and public scrutiny and will respond back to the legislature.

As you are aware, Commissioner Sandor has asked that the Air Quality Legislative Working Committee continue to provide the department and the legislature with the perspective of the many and various broad-based interests represented by the committee members. In that capacity we wanted to provide you with this letter and to let you know that we look forward to working with you in your consideration of the air quality legislation.

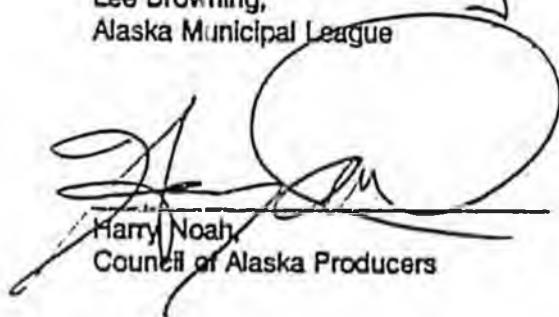
Sincerely,



Lee Browning,
Alaska Municipal League



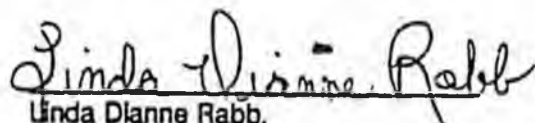
Steven Taylor,
Alaska Oil & Gas Assoc.




Harry Noah,
Council of Alaska Producers

Orally Approved by
Rick Lauber 2/2/93
T. Chapple

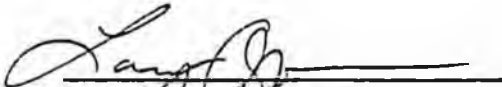
Rick Lauber,
Pacific Seafood Processors Association



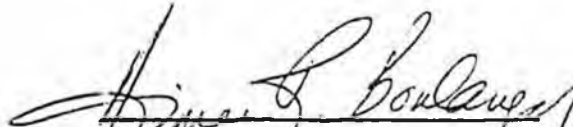
Linda Dianne Rabb,
Rural Alaska Power Association




Carl H. Harmon,
Alaska Rural Electric Cooperative Association




Larry Opperman
U.S. Air Force



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



Eric Myers,
General Public



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

cc: Members of Alaska State Legislature
ADEC Commissioner John Sandor
ADEC Assistant Commissioner Janice Adair

FISCAL NOTE

For Information Purposes Only (Note 1)

**STATE OF ALASKA
1993 LEGISLATIVE SESSION**

BILL NO. SB - 103

Revision Date: 9-Feb-93
 Title: Alaska Air Permit Statutes
 Sponsor: Senate Resources Committee
 Requestor: Senate Resources Committee

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

COMPONENT SERIAL NO. 1428

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 94(Note 1)	FY 95(Note 2)	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	0.0	3,125.2	3,125.2	3,125.2	3,083.1	3,083.1
TRAVEL	0.0	284.6	287.9	291.2	334.2	334.2
CONTRACTUAL	0.0	106.8	495.1	726.5	259.6	259.6
SUPPLIES	0.0	73.7	75.4	77.2	65.8	65.8
EQUIPMENT	0.0	156.8	0.0	0.0	0.0	0.0
LAND&STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	3747.1	3983.6	4220.1	3742.7	3742.7

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

FUNDING:

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

POSITIONS:

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

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

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

Prepared by: Leonard D. Verrelli, Chief *Leon D. Verrelli* Phone: 465-5100
 Division: Environmental Quality, Air Quality Management Date: 2/9/93

Approved by Commissioner: Janice Adair, Assistant Commissioner *Janice Adair*
 Agency: Department of Environmental Conservation Date: 2/10/93

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

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

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

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

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

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

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

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

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

1993 AIR BILL FISCAL NOTE BACK-UP

FY 93 TOTAL PERMIT PROGRAM COSTS

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

FY 93 TOTAL 1922.3

FY 95 TOTAL PERMIT PROGRAM COSTS

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

FY 95 TOTAL 3747.1

FY 96 TOTAL PERMIT PROGRAM COSTS

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

FY 96 TOTAL 3983.6

1993 AIR BILL FISCAL NOTE BACK-UP

FY 97 TOTAL PERMIT PROGRAM COSTS

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

FY 97 TOTAL 4220.1

FY 98 TOTAL PERMIT PROGRAM COSTS

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

FY 98 TOTAL 3742.6

FY 99 TOTAL PERMIT PROGRAM COSTS

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

FY 99 TOTAL 3742.6

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

AGENCY Environmental Conservation

FY 95

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BRU Environmental Quality

COMPONENT Air Quality Management

Revised Date: 2/1/93

**Request For
New Position**

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

AGENCY Environmental Conservation

BRU Environmental Quality

COMPONENT Air Quality Management

FY 95

Page 2 of 9

Revised Date: 2/1/83

**Request For
New Position**

Position Title Environmental Manager I (Small Business Advocate)		No. of Positions 1	Range / Step 20A	Barg. Unit Supervisory
Time Status Full Time	Staff Months 12	Location Anchorage		Election District Anchorage
TYPE OF EXPENDITURE		Amount	Justification The new Clean Air Act of 1990 requires all states to establish a completely new operating permit program which takes into account small sources never permitted before, includes greater public participation in the permit process, and requires the collection of fees to completely offset all costs for the review, issuance, and maintenance of the permit program. The Act also requires states to establish a Small Business Assistance Program which aids small businesses in permit process, provides technical and compliance assistance, and provides information about pollution prevention methods. The Environmental Manager I (Small Business Advocate) will: 1. develop revised regulations, recognizing small business concerns; 2. identify and assist small business permittees; 3. develop standardized permit applications; 4. prepare pollution prevention assistance programs; 5. provide assistance and information to permit applicants; 6. supervise the small business program; 7. train regional and district small business liaisons; and 8. report to the Small Business Compliance Advisory Panel.	
Salary		\$48.4		
Benefits		\$18.1		
Premium Pay		\$0.0		
Other	19% Administrative	\$12.6		
Total Personal Services		\$79.1		
Travel		\$40.3		
Contractual	\$ 6,000 / FTE	\$6.0		
Commodities	\$ 1,500 / FTE	\$1.5		
Equipment	\$ 7,000 / FTE	\$7.0		
Other	Compliance Advisory Panel Costs	\$25.4		
Total Cost		\$159.3		
FUNDING SOURCE FOR TOTAL COST				
Federal Receipts	1002			
G.F. Match	1003			
General Fund	1004			
I-A Receipts	1007			
CIP Receipts	1061			
Other	Program Receipts	\$159.3		

AGENCY Environmental Conservation

BRU Environmental Quality

COMPONENT Air Quality Management

FY 95

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Revised Date: 2/1/93

**Request For
New Position**

Position Title Attorney III			No. of Positions 1	Range / Step 22A	Barg. Unit Partially Exempt
Time Status Full Time	Staff Months 6		Location Juneau	Election District Juneau	
TYPE OF EXPENDITURE			Amount	Justification	
Salary			\$26.7	<p>The new Clean Air Act of 1990 requires all states to establish a completely new operating permit program which takes into account small sources never permitted before, includes greater public participation in the permit process, and requires the collection of fees to completely offset all costs for the review, issuance, and maintenance of the permit program. The Act also requires states to establish a Small Business Assistance Program which aids small businesses in permit process, provides technical and compliance assistance, and provides information about pollution prevention methods.</p> <p>The Attorney III will:</p> <ol style="list-style-type: none"> 1. issue opinions to interpret and apply legislation, regulations or other legal instruments; 2. draft enabling statutory authority; 3. perform comprehensive studies of legal questions where development of all background material is required; 4. advise and assist state agencies in conducting hearings and conferences and in preparing findings of fact, conclusions of law and decisions; 5. provide assistance to program staff on statutory procedures; 6. review State Implementation Plan revisions prior to submission to USEPA; and 7. review regulations prior to submission to Department of Law. 	
Benefits			\$9.7		
Premium Pay			\$0.0		
Other 19% Administrative			\$6.9		
Total Personal Services			\$43.3		
Travel \$ 4,000 / FTE			\$2.0		
Contractual \$ 6,000 / FTE			\$3.0		
Commodities \$ 1,500 / FTE			\$0.8		
Equipment \$ 7,000 / FTE			\$3.5		
Other					
Total Cost			\$52.6		
FUNDING SOURCE FOR TOTAL COST					
Federal Receipts	1002				
G.F. Match	1003				
General Fund	1004				
I-A Receipts	1007				
CIP Receipts	1061				
Other Program Receipts			\$52.6		

AGENCY Environmental Conservation

BRU Environmental Quality

COMPONENT Air Quality Management

FY 95

Page 4 of 9

Revised Date: 2/1/93

**Request For
New Position**

Position Title Analyst Programmer III			No. of Positions 1	Range / Step 17A	Barg. Unit GG
Time Status Full Time	Staff Months 11		Location Juneau	Election District Juneau	
TYPE OF EXPENDITURE			Amount	Justification The new Clean Air Act of 1990 requires all states to establish a completely new operating permit program which takes into account small sources never permitted before, includes greater public participation in the permit process, and requires the collection of fees to completely offset all costs for the review, issuance, and maintenance of the permit program. The Act also requires states to establish a Small Business Assistance Program which aids small businesses in permit process, provides technical and compliance assistance, and provides information about pollution prevention methods. The Analyst Programmer III will: 1. develop and maintain the air permit database system; 2. develop and maintain a permit fee analysis and collection system; 3. perform the duties of the LAN administrator, including routine system backups; 4. write general instructions for using network programs; 5. guide and advise less-informed colleagues on an informal basis in the use of programming languages and data processing techniques; 6. research and respond to complaints regarding the permit application system; and 7. train users in the use and application of user friendly data processing systems.	
Salary		\$35.1			
Benefits		\$14.1			
Premium Pay		\$0.0			
Other 19% Administrative		\$9.3			
Total Personal Services		\$58.5			
Travel		\$0.0			
Contractual \$ 6,000 / FTE		\$5.5			
Commodities \$ 1,500 / FTE		\$1.4			
Equipment \$ 7,000 / FTE		\$6.3			
Other					
Total Cost		\$71.7			
FUNDING SOURCE FOR TOTAL COST					
Federal Receipts	1002				
G.F. Match	1003				
General Fund	1004				
I-A Receipts	1007				
CIP Receipts	1061				
Other Program Receipts		\$71.7			

AGENCY Environmental Conservation

BRU Environmental Quality

COMPONENT Air Quality Management

FY 95

Page 5 of 9

Revised Date: 2/1/93

**Request For
New Position**

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

AGENCY Environmental Conservation

BRU Environmental Quality

COMPONENT Air Quality Management

FY 95

Page 6 of 9

Revised Date: 2/1/93

**Request For
New Position**

Position Title Data Processing Clerk II		No. of Positions 1	Range / Step 09A	Barg. Unit GG
Time Status Full Time	Staff Months 11	Location Juneau		Election District Juneau
TYPE OF EXPENDITURE		Amount	Justification The new Clean Air Act of 1990 requires all states to establish a completely new operating permit program which takes into account small sources never permitted before, includes greater public participation in the permit process, and requires the collection of fees to completely offset all costs for the review, issuance, and maintenance of the permit program. The Act also requires states to establish a Small Business Assistance Program which aids small businesses in permit process, provides technical and compliance assistance, and provides information about pollution prevention methods. The Data Processing Clerk II will: 1. verify document entry sheets for correctness; 2. key enter data via computer terminal; 3. access and provide specified data information; 4. prepare diskettes for data entry; 5. prepare information packets for potential permittees; 6. prepare permit documentation and correspondence; 7. implement reporting and auditing procedures; and 8. develop standardized managerial summaries of fund activity.	
Salary		\$21.0		
Benefits		\$10.3		
Premium Pay		\$0.0		
Other	19% Administrative	\$5.9		
Total Personal Services		\$37.2		
Travel		\$0.0		
Contractual	\$ 6,000 / FTE	\$5.5		
Commodities	\$ 1,500 / FTE	\$1.4		
Equipment	\$ 7,000 / FTE	\$6.3		
Other				
Total Cost		\$50.4		
FUNDING SOURCE FOR TOTAL COST				
Federal Receipts	1002			
G.F. Match	1003			
General Fund	1004			
I-A Receipts	1007			
CIP Receipts	1061			
Other	Program Receipts	\$50.4		

AGENCY Environmental Conservation

BRU Environmental Quality

COMPONENT Air Quality Management

FY 95

Page 8 of 9

Revised Date: 2/1/93

**Request For
New Position**

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

AGENCY Environmental Conservation

FY 95

Page 9 of 9

BRU Environmental Quality

COMPONENT Air Quality Management

Revised Date: 2/1/93

**Request For
New Position**

AIR QUALITY LEGISLATIVE WORKING COMMITTEE

December 28, 1992

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

Dear Commissioner Sandor:

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

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

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

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

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

summarize a few of the most important points.

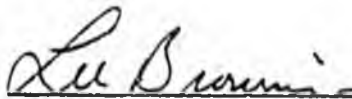
- The department organized the committee and requested that deliberations begin with the document entitled CS FOR SENATE BILL NO. 388 (RESOURCES) Work Draft dated 5/8/92.
- The Committee adopted a mission statement, meeting protocol and adopted the contents of the CS Work Draft as a basis to begin deliberations.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

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

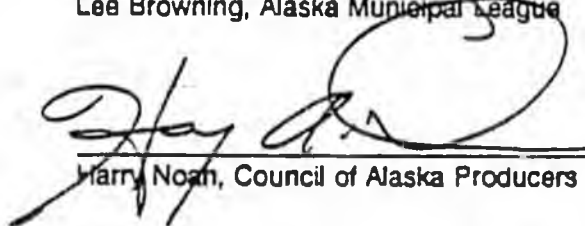
Debate on several subjects reflected the strongly held views of many diverse interests represented on the committee. Although debate became heated at times, members strove to seek common ground in arriving at compromise language. Most provisions of the draft bill were supported by unanimous vote of committee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


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

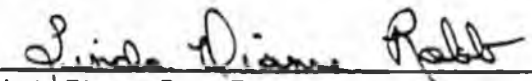
SINCERELY,

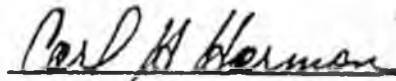

 Lee Browning, Alaska Municipal League

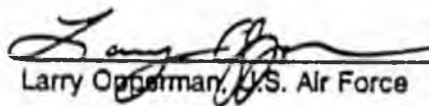

 Steven Taylor, Alaska Oil & Gas Assoc.

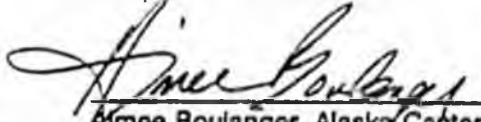

 Harry Noah, Council of Alaska Producers

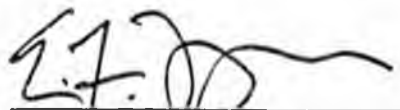

 Rick Lauber, Pacific Seafood Processors Association

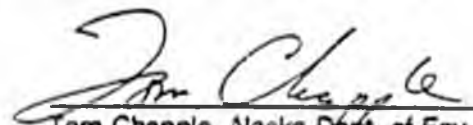

 Linda Dianne Rabb, Rural Alaska Power Association


 Carl H. Harmon, Alaska Rural Electric Cooperative Association


 Larry Opperman, U.S. Air Force


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


 Eric Myers, General Public


 Tom Chapple, Alaska Dept. of Env. Conservation

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

Enclosures:

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

ARTICLE _ PERMIT PROGRAM REQUIREMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (1) a construction permit within 30 days after the close of the public comment period;
- (2) an operating permit, other than a general operating permit or temporary operating permit, within 12 months after receipt of the complete application by the department.

(b) Notwithstanding (a) of this section, the department may establish a phased schedule for acting on operating permit applications submitted within the time required under AS 46.14.220. A phased schedule must ensure that at least one-third of the applications submitted during the initial application period will be acted on by the department during each of the three years following the initial application period. The department shall give priority to the issuance of permits for new facilities and modifications of existing facilities.

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

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

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

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

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

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

Sec. 46.14.240. GENERAL OPERATING PERMITS. After notice and opportunity for public comment and hearing, the department may, unless the permit is disapproved by the federal administrator, establish a general operating permit that would be applicable to all facilities determined by the department to be similar in source structure. A general

operating permit must contain provisions that meet the requirements of this chapter applicable to operating permits. A general operating permit takes effect when the application is determined to be complete unless the department notifies the applicant that the general permit is not applicable to the facility.

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

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

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

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

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

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

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

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

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

ARTICLE __. PERMIT PROGRAM FEES

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

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

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

(c) Emission Fees.

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE __. SMALL BUSINESS ASSISTANCE PROGRAM

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

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

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

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

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

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

(b) The panel consists of

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

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

(c) The compliance advisory panel shall

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

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

ARTICLE __. LOCAL AIR QUALITY PROGRAMS

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

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

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

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

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

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

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

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

(h) Notwithstanding any other provision or rule of law, the department may not delegate or enable any other department or government entity to establish fee rates or collect fees under AS 46.14. ____¹

Notes:

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

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