ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 8672

9676 SENATE RESOURCES

76

place conditions upon certain acreages being conveyed. The general municipal entitlement statutes provide for unconditional conveyance, which, because of concerns of the Department of Fish & Game and others, limits the ability of DNR to convey much of the acreage sought. If the Borough had the ability to agree to such conditions in order to obtain conveyance of particular parcels, this would facilitate DNR's ability to grant the total acreage sought. Because of the lack of present surveying, smaller areas of Department of Fish & Game habitat concerns affect and jeopardize the ability of DNR to convey much larger areas which do not feature such concerns. The language of the bill which authorizes DNR to attach conditions agreed upon the CBY will facilitate DNR's ability to convey the total acreages requested by the CBY.

Concerns of various parties regarding any specific parcel would be addressed by DNR in determining whether it is in the State's best interest to grant a particular conveyance requested by the Borough, after the legislation becomes law.

CORRECTION

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(3000.5\statu.1)

SB

286

SENATE DISTRICT C
KODIAK ISLAND
SOUTHEAST ISLANDS

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SENATOR JERRY MACKIE

ALASKA STATE LEGISLATURE

SPONSOR STATEMENT

SB 286, Adverse Possession of Real Property

I introduced SB 286 to bring attention to the state's current laws governing the adverse possession of a private property and its suitability to land ownership in the state and to modern advances in the location, description, and recording of private lands. The legislation addresses two conditions of adverse possession. The first is the "squatter" situation where a person knowingly and with intent occupies another persons property. After ten years of use, the occupant can claim ownership by adverse possession under current law. In addition there is no compensation to the real owner for his or her loss.

In the second instance, the person's occupancy of the property is under a good faith belief that they have clear title or other documentation establishing their ownership. This instance also includes the adjacent property owner who mistakenly locates on neighboring land. In each situation, the property can be claimed after seven years of adverse possession.

Much of the private land in the state is now located in remote, wilderness areas of the state because of the ANCSA settlements and other properties associated with historical mining activities. Because of their remoteness these properties are more subject to inattention by their owners and therefore susceptible to adverse possession. SB 286 proposes to eliminate any adverse possession claim by a person who knowingly and intentionally occupies land they do not own. When the occupancy is inadvertent, the legislation increases the standards for adverse possession. In this later case, the original owner must be compensated.

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. SB 286

Revision Date (Note if correction)
Dept. Affected: Law
Title: An Act relating to actions to quiet title to, eject a person from, or recover real property or the possession of it ...
BRU: Civil Division
Component: Natural Resources
Sponsor: Senator Mackie
Requester: Senate Resources Committee
Component Serial No. 2212

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	*********	*********	*********	*********	*********	*********

CAPITAL EXPENDITURES						

CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	*********	*********	*********	*********	*********	*********

Estimate of any current year (FY98) cost:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

SB 286 would repeal the statute of limitations for quiet title actions claiming title through a recorded doument, and extend the statute limitations for adverse possession (no color of title) from 7 to 20 years. Adverse possession claims against the state would still be prohibited, so the latter change will have no fiscal impact on the Department of Law. However, the potential for quiet title claims, with no statute of limitations on how soon they must be filed, increases. This will result in more litigation, as many claims now subject to the statute of limitations, would remain alive. The department cannot quantify how much new litigation would result, and must submit an indeterminate fiscal note.

Prepared by: Joan M Kasson — Phone: 465-5370
Division: Attorney General's Office — Date: 2/13/98
Approved by Commissioner, Agency: Bruce M Botelho, Attorney General, Department of Law — Date: 2/13/98

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SB 286

Legislation to Limit the Circumstances Under Which A Person May Divest a Landowner of Title to Its Land Under the Doctrine of Adverse Possession:

A Rationale and Section-by-Section Analysis

I. Rationale

A. Overview of the Legislation

"Adverse possession" is the doctrine under which a person--even a squatter acting in bad faith--can take another person's property without compensation by simply possessing it, in an open and hostile way, for a certain period of years. It is a doctrine born in the Middle Ages under circumstances that have little applicability to 20th Century Alaska, and it offends Alaska's abiding respect for private property ownership.

The enclosed legislation would limit the availability of this doctrine to two narrow circumstances where the rule may have some arguable policy justification: (1) where a person has, in good faith, occupied property under color of title for 20 years; and (2) where a property owner occupies property adjacent to his own land under a reasonable, good-faith error over the actual boundaries of his property.

In both instances, the adverse possessor would be required to pay the property's legal owner both full market value for the property taken, as well as any consequential damages.

Beyond these two limited circumstances, "adverse possession" is a doctrine inimical to the concept of private property ownership. And it imposes a particularly harsh burden on private landowners in Alaska who, because of the doctrine, are often

charged with the impossible task of policing large remote landholdings to assure themselves that no squatter has taken residence.

That burden is an economic waste, and serves no valid public policy. As a result, beyond the limited circumstances mentioned, the concept of taking another's land by "adverse possession" ought to be abolished in Alaska.

B. The Origins and Purpose of the "Adverse Possession" Doctrine

1. The Doctrine's Original Rationale--Possession was Equated with Ownership

"Adverse possession" is a doctrine that rewards possession of land at the expense of the landowner. Not surprisingly, then, the doctrine has its roots in the feudal concept of "seizin." In the early Middle Ages, "ownership" of land was proven not by title or deed, but rather by actual possession. If a person was forcefully expelled from his property, the trespasser became the land's new "owner," and the dispossessed person could regain "ownership" only by himself resorting to force. [1]/

Gradually, the dispossessed "owner" was given a legal remedy to regain possession--a remedy which, by virtue of a statute issued under Henry VIII, must be exercised within 60 years of dispossession. Thus was borne the thought that a person could recover his land from an "adverse possessor," but only if he acted within a specific period of time. [2]/

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[1] / 5 George W. Thompson, *Commentaries on the Modern Law of Real Property* (1979) ("*Commentaries*") at 573-76.

[2] / *Commentaries, supra* at 574-76. Actually, "adverse possession" rules can be traced further back, to the Code of Hammurabi, which provided, in part, that:

> *If a captain or a soldier has neglected his field, his garden and his house, instead of working them; and another takes his field, his garden and his house, and works them for three years;*

Remember, though, that in those days possession--or "seizin"--*was* title. Therefore, by giving the "adverse possessor"--or "disseizor"--the opportunity to bar the person he dispossessed from reclaiming his property after 60 years, feudal courts were, in their minds, doing no injustice to the prior occupant, since that occupant had lost the basis for his claim of "ownership" when he was forceably dispossessed.

2. A New Rationale--Possession was the Best Proof of Ownership

Gradually, English common law came to recognize the concept of conveying and holding land by deed. "Title" became something different from, and superior to, mere "possession." And so the doctrine of "adverse possession" needed a new rationale.

The virtue of "seizin," of course, was that it was obvious who is "seized" of a particular piece of property--the person living on it. "Title," conversely, was the source of considerable dispute, since there then existed no reliable, centralized recording system to resolve conflicting claims of "title." As a result:

> *In an era of comparatively scarce land, decentralized records and crude surveying techniques, lengthy possession may have been the best possible proof of ownership.*

[3]/ Thus, while possession no longer equated with ownership, possession remained the best evidence of "title," and so the doctrine of adverse possession continued to serve some worthwhile purpose. "Ultimately, the 1623 Statute of Limitations required that

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> *if he returns and desires to till his field, his garden, and his house, they shall not be given to him. He that has taken and worked them shall continue to use them.*

The Hammurabi Code and the Sinaitic Legislation at 32-33 (Chilperic Edwards ed., 1904).

[3] / Sprankling, *An Environmental Critique of Adverse Possession*, 79 Cornell Law Rev. 816, 822 ("*Critique*") (1994).

suits to recover possession of land be brought within twenty years. The Statute recited that this limit was necessary for 'quieting men's estates, and avoiding of suits...'" [4]/

3. *The New American Purpose--Social Engineering*

In James I's England, if a person owned land, he probably lived on it. [5]/ Even by the 16th century, there was precious little wild land in England that a person might own, but not make productive use of. [6]/

This was not true in North America, where vast tracts of wilderness might lie in private ownership. Here, the assumption that ownership was reliably proven by physical possession did not hold true:

> *Transplanted to the abundant, sparsely populated wild lands of North America, however, the assumptions of the [doctrine of adverse possession] ...failed. The terrain was too hostile, the forests too impenetrable and the distances too vast for most owners to reside upon or even to inspect their properties regularly. More importantly, possession of land in the English sense, characterized by residence, cultivation or improvement, was often impractical. The minor acts, greatly separated in time, that characterized land use in wilderness areas were unlikely to afford constructive notice to the owner who did inspect occasionally.*

Critique, supra at 823. "Adverse possession," then, needed a new purpose, and found one in our 19th century urge to settle the West. The modern doctrine "developed when much of the continental United States was unsurveyed wilderness," and our courts and legislatures resultantly "adopted a public policy that as much land should be put to use as

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[4] / *Critique, supra* at 823.

[5] / James I promulgated the 1623 statute just quoted.

[6] / By 1696, only 16% of England's land were uncultivated forest lands. *Critique, supra* at 822, n. 25.

possible." [7] Under the new theory of adverse possession, the squatter was to be rewarded for making use of wild land, even at the expense of the person who owned it:

> *Beginning in the nineteenth century, American courts serving the ideology of economic expansion reformulated adverse possession in the pursuit of national productivity. These courts transformed the doctrine from a mechanism designed to* ***protect*** *the title of the true owner against false claims into a tool designed to* ***transfer*** *title to wild lands from the idle true owner to the industrious adverse posessor.*

Critique, supra at 821 (emphasis original).

The American justification for the doctrine also took on something of a Marxist tint. Vast expanses of public lands were conveyed to large, absentee landlords--principally, the railroads. As pioneers struck west and inadvertently homesteaded then-or-future railroad land, Western state legislators, and courts, concluded that disputed land should belong to the worker rather than the absentee capitalist:

> *By 1803 more than ninety percent of the nation consisted of sparsely populated, publicly owned wild lands. The broad federal policy toward these wild lands was to transfer them into private ownership, initially through sale. Because the government had never been able to enforce its theoretical ban against squatting on these lands, sales often resulted in conflicts between new absentee owners holding legal title and actual settlers who had already placed the land in productive use.*

Critique, supra at 843. For this reason, the periods necessary to establish title by "adverse possession" tended to shrink as one proceeds westward--from the old 20-year English rule still prevalent in the original colonies, to as little as five years in many western states. *See Attachment A.*

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[7] / *Seddon v. Harpster*, 403 So. 2nd 409, 413 (Florida 1981).

C. Adverse Possession in 20th Century Alaska--A Doctrine Without a Reason

To this day, some courts, including the Alaska Supreme Court, maintain that the doctrine of adverse possession serves a useful public purpose because "society will benefit from someone's making use of land the owner leaves idle." [8]/

One might argue that there is considerable "idle" land in Alaska's ***public*** domain. However, in Alaska as elsewhere, neither the state nor federal government can be divested of title through adverse possession. AS 09.45.052(a). And Alaska has precious little "idle" private land.

The largest private landowners in Alaska are the Native corporations established under the Alaska Native Claims Settlement Act. Those lands were conveyed both in settlement of Alaska Natives' aboriginal claims, and to meet the "real economic and social needs of Natives." ANCSA, §1. ANCSA lands, then, and every acre of them, serve an important legal, social and economic purpose. They are not, any of them, "idle" in that sense.

Congress, in fact, has recognized that fact, and has accordingly extended ANCSA lands some protection from adverse possession claims as long as they remain undeveloped. 43 U.S.C. §1636(d). But ANCSA corporations often acquire other remote lands for future resource development purposes, as will other private landowners as time goes by. To the extent that these lands are not developed, it is because development now would be an economic waste, and there is no sound public policy that should prevent a private landowner from investing those lands for future generations.

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[8] / *Tenala, Ltd. v. Fowler*, ___ P.2nd ___, Slip Op. 4376 at 16 (August 2, 1996).

The last remaining modern justification for adverse possession is that it "keep[s] stale causes out of court." *Tenala, Ltd. v. Fowler, supra* at 16. But, in fact, it does just the opposite. Adverse possession cases involve untrustworthy testimony about who possessed what 10 or 20 years ago; conversely, and "considering current methods of record storage on microfiche, computer disks and data tapes," claims based on record ownership will never grow stale. [9]

Similarly, allowing adverse possession claims promotes litigation, while limiting them discourages it. This because:

> *Bright line standards generally deter litigation...The record title standard draws an exceedingly bright line: the holder of record title always prevails. In contrast, adverse possession as applied to wild lands is an indeterminate, murky standard under which results can rarely be predicted with certainty.*

Critique, supra at 878. The fact of the matter, as Florida's Supreme Court observed, is that "[w]ith modern technology and computerized transactions our society is now more capable of accurately establishing legal interest to property through paper title than through possession." *Seddon v. Harpster*, 493 So.2nd at 414.

Adverse possession serves no useful public purpose in Alaska today, and it disserves others. Apart from its impact on private property ownership generally, and implementation of ANCSA in particular, "[a]dverse possession...erode[s] the effectiveness and utility of both recording and marketable title statutes by creating uncertainty." *Outlaws, supra* at 97.

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[9] *"Outlaws of the Past: A Western Perspective on Prescription and Adverse Possession,"* 31 Land and Water Law Review 79, 104 (1996) (*"Outlaws"*).

The doctrine ought to be limited to those few situations where some equity might lie in the adverse possessor's favor, and the enclosed legislation attempts to do just that.

II. Section-by-Section Analysis

Section 1. There are two adverse possession statutes in Alaska. The first is AS 09.10.030. This is the squatters' statute. The adverse possessor need not occupy the property under "color of title"--that is, a deed or other conveyance. And the squatter need not even occupy the property in good faith. [10]/ As one commentator puts it, this statute "gives title not only to one who because of good faith error occupies the land of another but also to a person who knowingly sought to appropriate another's land." [11]/

Under this statute, the squatter must adversely possess the property for 10 years. After that, the statute, which is framed as a statute of limitations, bars the property's owner from bringing any action against the squatter to recover his property.

Section 1 would amend this statute to provide that a landowner could recover his or her land--by a quiet title or ejectment action--at any time. [12]/ Because of computerized land records, the land owner's claim will never, as a practical matter, grow stale.

Sections 2-3. There are several elements to Sections 2-3:

1. Retaining adverse possession claims arising under "color of title." AS 09.45.052 is Alaska's second adverse possession statute, and it deals with adverse possession that is based on "color of title." In other words, the adverse possessor has some deed or other document purporting (but for some reason failing) to convey title to

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[10] / *Hubbard v. Curtiss*, 684 P.2nd 842, 848 (Alaska 1984).
[11] / 7 Richard R. Powell, *Powell on Real Property*, ¶1012(3) (1993).
[12] / To the extent that this statute governs other types of real property claims, the 10-year statute of limitations would be retained.

the property being possessed. Unlike the statute amended by Section 1, this statute requires good faith on the part of the possessor--in other words, an honest and reasonable belief that the possessor really owns the land. *Ault v. State*, 688 P.2nd 951, 956 (Alaska 1984).

Under subsection (a)(1), Section 2 retains "color of title" as a basis for claiming property by adverse possession, but returns the required period of possession to the common law's original 20 years.

2. *Allowing adverse possession claims to be brought for good faith boundary disputes.* A second specie of adverse possession claims that may retain some public policy justification arises when a property owner, in good faith, occupies property beyond the boundaries of property owned by that person. After 20 years' notorious and adverse possession of that property, the property owner may quiet title to the adjacent property he or she has occupied.

3. *Explicitly requiring a showing of good faith.* Section 2 makes the existing court-imposed requirement of "good faith" explicit in the statute, as Oregon did in 1989. [13]/

4. *Requiring the possessor to prove entitlement to the property by "clear and convincing evidence."* Again, this requirement is already imposed by the courts. [14]/ Section 2 would make that requirement explicit.

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[13] / ORS 105.620. As our Supreme Court has noted, "in almost all of these jurisdictions, the requirement of good faith was explicitly written into the statutes." *Lott v. Muldoon Road Baptist Church, Inc.*, 466 P.2nd 815, 818, n. 9 (Alaska 1970). The "good faith" requirement will exist whether or not this legislation is enacted; however, it is better practice for the material elements of any claim to be expressed in the statute itself.

[14] / *Curran v. Mount*, 657 P.2nd 389, 391 (Alaska 1982).

5. Requiring just compensation to the property owner. It is one thing to allow a person to take the private property of another. It is quite another to allow the adverse possessor to do so without paying the owner, and none of the modern justifications for the doctrine of adverse possession explain the squatter's current ability to deprive property owners of land ***without compensation***.

Section 3 requires the successful adverse possessor, as a condition of receiving title to the property, to: (1) pay for an appraisal of the property; (2) pay the record owner the appraised value of the property taken; and (3) pay any other damages that the owner may have suffered as a result of the adverse possession and loss of the property (including the rental value of the property during the period of adverse possession), as a condition of quieting title in the possessor's favor. If the adverse possessor fails to promptly do so, title will be quieted in the owner's favor.

Section 4. This section makes the new legislation applicable to any adverse possession claim that has not "vested" by the effective date of the legislation. Adverse possession claims "vest" when the adverse possessor has met the statutory requirements for the requisite number of years--under current Alaska law, 10 years (or seven years for claims under color of title). [15]/ Serious constitutional questions would arise if the legislation purported to extinquish already-vested adverse possession claims; conversely, there would appear to be no constitutional difficulty in affecting unvested claims, since

[15] / *Markovich v. Chambers*, 857 P.2nd 906, 908 (Or. App. 1993).

an adverse possessor has no protected right in the mere expectation that, eventually, he or she may possess the land for a sufficient period of time. [16]

Section 5. Section 5 gives an immediate effective date to the legislation.

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[16] *See Lovell v. Magnet Cove School District No. 8*, 782 S.W.2nd 41, 42 (Ark. 1990) (change in Arkansas adverse possession statutes applicable to unvested adverse possession claims).

Issue: Limiting the Grounds for Taking Property Under the Doctrine of Adverse Possession

Description of the Issue: Under current Alaska law, a squatter, acting in bad faith, can take another person's property, without paying compensation, by possessing that property in an open and hostile manner for 10 years. This is the doctrine of "adverse possession," which was born in the Middle Ages and serves no modern social purpose. The issue here is whether Alaska should limit the doctrine to only those cases were: (i) a person can make a good faith claim of title under some written instrument; or (ii) there is a good faith error regarding property boundaries.

Discussion of the Issue: If a person, in bad faith (indeed, with an intent to steal another person's land), enters onto remote private property and builds a squatter's cabin, or some other rudimentary improvement, the thief can claim ownership of the land he has invaded after living there for 10 years. The squatter will owe no compensation to the private landowner whose property he took.

This is the doctrine of "adverse possession," and it is the product of the Dark Ages, when a person only "owned" land if he possessed it, and when ownership could be achieved by force.

Obviously, civilized society views the original premise on which this doctrine was founded as abhorrent. And so a new justification has been woven. This one argues that at least a squatter makes productive of use of land. And, the argument continues, it is better that the land be given to a productive squatter, rather than left with the person who paid for it.

That is poor environmental policy. It is also classic Marxist theory--that is, the busy laborer having the right to take the idle capitalist's land. And it has little currency here in Alaska. Here, ANCSA corporations and other private landowners hold large tracts of remote wilderness that are difficult to patrol, and which neither can nor should be developed all at once. To nonetheless penalize these landowners for failing to undertake the massive and wasteful expense of constantly policing their long-term investment serves no valid policy function.

Legislation may be introduced in the 1998 session to deny squatters the ability to take other peoples' property. Instead, the doctrine of "adverse possession" would be limited to two circumstances where the person claiming under the doctrine might have some equity on his side;

- *1st*, when a person has a competing deed or other written instrument of conveyance, and that person, in good faith reliance on that competing document, occupies the property for at least 20 years; and

- *2nd*, where a neighboring landowner makes a good faith mistake about the actual boundary of his property, and mistakenly occupies some adjoining property--again for at least 20 years.

In either case, the person claiming under "adverse possession" would owe compensation to the property's actual owner, both for the value of the land taken and a fair rental for the period of adverse possession.

The legislation would apply to all claims of adverse possession except those that became "vested" before the law was changed--*i.e.*, where a squatter had already openly occupied property for the 10 now-required years.

Recommendation: The doctrine of adverse possession undermines the system of recording titles on which modern commerce depends. The doctrine also spawns litigation. The strict limitations on the doctrine described above would signal Alaska's commitment to protect private property rights, as well as discourage litigation and promote certainty in our legal title system. The recommendation here is to support legislation that would limit the doctrine in the manner described in this paper.

Sec. 14.40.291. Land of the University of Alaska not public domain land.

Notwithstanding any other provision of law, university-grant land, state replacement land that becomes university-grant land on conveyance to the university, and any other land owned by the University of Alaska is not and may not be treated as state public domain land. Title or interest to land described in this section may not be acquired by adverse possession, prescription, or in any other manner except by conveyance from the university. The land is subject to condemnation for public purpose in accordance with law.

(§ 6 ch 22 SLA 1983)

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Sec. 09.45.052. Adverse possession.

(a) The uninterrupted adverse notorious possession of real property under color and claim of title for seven years or more is conclusively presumed to give title to the property except as against the state or the United States. For the purpose of this section, land that is in the trust established by the Alaska Mental Health Enabling Act of 1956, P.L. 84-830, 70 Stat. 709, is land owned by the state.

(b) Except for an easement created by Public Land Order 1613, adverse possession will lie against property that is held by a person who holds equitable title from the United States under paragraphs 7 and 8 of Public Land Order 1613 of the Secretary of the Interior (April 7, 1958).

(§ 3.15 ch 101 SLA 1962; am § 1 ch 141 SLA 1986; am § 58 ch 66 SLA 1991)

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TESTIMONY OF RICHARD P. HARRIS

Senate Resources Committee
February 20, 1998

SENATE BILL 286 - ADVERSE POSSESSION

I am Richard Harris, Senior Vice President of Sealaska Corporation, a Native Regional Corporation, organized under the Alaska Native Claims Settlement Act ("ANCSA") and under the laws of the State of Alaska. Sealaska Corporation has over 16,000 shareholders, with over half being residents of the State of Alaska. Under the Settlement Act, Sealaska has received over 330,000 acres of fee estate and an additional 300,000 acres of subsurface estate underlying ANCSA Village and Urban Corporations' lands. Sealaska is the largest private land owner in Southeast Alaska, with its land base primarily located on Prince of Wales Island, Chicagof Island, Kupreanof Island, and Dall Island.

"Adverse possession" is the doctrine under which a person--even a squatter acting in bad faith--can take another person's property without compensation by simply possessing it, in an open and hostile way, for a certain period of years. It is a doctrine born in the Middle Ages under circumstances that have little applicability to 20th Century Alaska, and it offends Alaska's abiding respect for private property ownership.

There are two adverse possession statutes in Alaska. The first is AS 09.10.030. This is the squatters' statute. The adverse possessor need not occupy the property under "color of title"--that is, a deed or other conveyance. And the squatter need not even occupy the property in good faith. This statute gives title not only to one who because of good faith error occupies the land of another but also to a person who knowingly sought to appropriate another's land.

Under this statute, the squatter must adversely possess the property for 10 years. After that, the statute, which is framed as a statute of limitations, bars the property's owner from bringing any action against the squatter to recover his property.

AS 09.45.052 is Alaska's second adverse possession statute, and it deals with adverse possession that is based on "color of title." In other words, the adverse possessor has some deed or other document purporting (but for some reason failing) to convey title to the property being possessed. This statute requires good faith on the part of the possessor--in other words, an honest and reasonable belief that the possessor really owns the land.

Adverse Possession in 20th Century Alaska--A Doctrine Without a Reason

To this day, some courts, including the Alaska Supreme Court, maintain that the doctrine of adverse possession serves a useful public purpose because society will benefit from someone's making use of land the owner leaves idle.

One might argue that there is considerable "idle" land in Alaska's ***public*** domain. However, in Alaska as elsewhere, neither the state nor federal government can be divested of title through adverse possession. And Alaska has precious little "idle" private land.

The largest private landowners in Alaska are the Native corporations established under the Alaska Native Claims Settlement Act. Those lands were conveyed both in settlement of Alaska Natives' aboriginal claims, and to meet the "real economic and social needs of Natives." ANCSA lands, then, and every acre of them, serve an important legal, social and economic purpose. They are not, any of them, "idle" in that sense.

Congress, in fact, has recognized that fact, and has accordingly extended ANCSA lands some protection from adverse possession claims as long as they remain undeveloped. However, these lands become subject to the claims of adverse possession when they become developed. In Sealaska's case, under federal law, the mere fact that the our land is being harvested for timber makes the land, as any other private lands, subject to the claims of adverse possession. Thus, a squatter could set up on Sealaska's land while there is timber harvesting going on, and begin adversely possessing the land. Because much of Sealaska's lands are in remote areas, we may never know about the squatter until it is too late. Further, ANCSA corporations often acquire other remote

lands for future resource development purposes, as will other private landowners as time goes by. To the extent that these lands are not developed, it is because development now would be an economic waste, and there is no sound public policy that should prevent a private landowner from investing those lands for future generations.

The last remaining modern justification for adverse possession, expressed by the Alaska Supreme Court is that it "keep[s] stale causes out of court." But, in fact, it does just the opposite. Adverse possession cases involve untrustworthy testimony about who possessed what 10 or 20 years ago; conversely, and "considering current methods of record storage on microfiche, computer disks and data tapes," claims based on record ownership will never grow stale.

Similarly, allowing adverse possession claims promotes litigation, while limiting them discourages it. This because:

- Bright line standards generally deter litigation
- The record title standard draws an exceedingly bright line: the holder of record title always prevails.
- In contrast, adverse possession as applied to wild lands is an indeterminate, murky standard under which results can rarely be predicted with certainty.

The fact of the matter, as Florida's Supreme Court observed, is that "[w]ith modern technology and computerized transactions our society is now more capable of accurately establishing legal interest to property through paper title than through possession."

Adverse possession serves no useful public purpose in Alaska today, and it disserves others. Apart from its impact on private property ownership generally, and implementation of ANCSA in particular, "[a]dverse possession...erode[s] the effectiveness and utility of both recording and marketable title statutes by creating uncertainty.".

Sealaska Corporation endorses Senate Bill 286 and urges the committee to give it favorable passage. Senate Bill 286 would allow adverse possession claims to be brought for good faith boundary disputes. There is probably some public policy justification for the situation when a property owner, in good faith, occupies property beyond the boundaries of property owned by that person. After 20 years' notorious and adverse possession of that property, the property owner may quiet title to the adjacent property he or she has occupied. Provided that there is: 1) an explicitly showing of good faith; 2) a requiremet that the possessor prove entitlement to the property by clear and convincing evidence; and 3) that the possessor pay the landowner the fair market value of the interest possessed. For it is one thing to allow a person to take the private property of another. It is quite another to allow the adverse possessor to do so without paying the owner, and none of the modern justifications for the doctrine of adverse possession explain the squatter's current ability to deprive property owners of land ***without compensation.***

CONCLUSION: The doctrine of adverse possession ought to be limited to those few situations where some equity might lie in the adverse possessor's favor, and SB 286 attempts to do just that. This legislation would limit the availability of this doctrine to two narrow circumstances where the rule may have some arguable policy justification: (1) where a person has, in good faith, occupied property under color of title for 20 years; and (2) where a property owner occupies property adjacent to his own land under a reasonable, good-faith error over the actual boundaries of his property.

In both instances, the adverse possessor would be required to pay the property's legal owner both full market value for the property taken, as well as any consequential damages.

Beyond these two limited circumstances, "adverse possession" is a doctrine inimical to the concept of private property ownership. And it imposes a particularly harsh burden on private landowners in Alaska who, because of the doctrine, are often charged with the impossible task of policing large remote landholdings to assure themselves that no squatter has taken residence.

That burden is an economic waste, and serves no valid public policy. As a result, beyond the limited circumstances mentioned, the concept of taking another's land by "adverse possession" ought to be abolished in Alaska.

Thank you for the opportunity to address this issue and speak in support of Senate Bill 286. I would be pleased to answer any questions that the committee members may have.

SUMARY SENATE BILL 286

ADVERSE POSSESSION

Section 1. Section 1 would amend this statute to provide that a landowner could recover his or her land--by a quiet title or ejectment action--at any time. Because of computerized land records, the land owner's claim will never, as a practical matter, grow stale.

Sections 2-3. There are several elements to Sections 2-3:

1. Retaining adverse possession claims arising under "color of title." Under subsection (a)(1), Section 2 retains "color of title" as a basis for claiming property by adverse possession, but returns the required period of possession to the common law's original 20 years.

2. Allowing adverse possession claims to be brought for good faith boundary disputes.

3. Explicitly requiring a showing of good faith.

4. Requiring the possessor to prove entitlement to the property by "clear and convincing evidence."

5. Requiring just compensation to the property owner.

Section 3 requires the successful adverse possessor, as a condition of receiving title to the property, to: (1) pay for an appraisal of the property; (2) pay the record owner the appraised value of the property taken; and (3) pay any other damages that the owner may have suffered as a result of the adverse possession and loss of the property (including the rental value of the property during the period of adverse possession), as a condition of quieting title in the possessor's favor. If the adverse possessor fails to promptly do so, title will be quieted in the owner's favor.

Section 4. This section makes the new legislation applicable to any adverse possession claim that has not "vested" by the effective date of the legislation. Adverse possession claims "vest" when the adverse possessor has met the statutory requirements for the requisite number of years--under current Alaska law, 10 years (or seven years for

claims under color of title). Serious constitutional questions would arise if the legislation purported to extinguish already-vested adverse possession claims; conversely, there would appear to be no constitutional difficulty in affecting unvested claims, since an adverse possessor has no protected right in the mere expectation that, eventually, he or she may possess the land for a sufficient period of time.

Section 5. Section 5 gives an immediate effective date to the legislation.

SB
299

SENATE COMMITTEE REPORT
First Committee of Referral

DATE: 2/12/98

FURTHER:

Date of 5-Day Notice: 3/12/98
(in accordance with Uniform Rule 23)

DATE TURNED IN TO OFFICE: 3/23/98

Resources Committee considered SENATE BILL NO. 299

"An Act relating to the treatment of well test flares, nonroad engines, and aggregated fuel burning equipment associated with nonroad engines under the state's air quality control program."

and recommends:

[ ] be **replaced** with ______ CS ______________________(________)

[ ] adopt **previous** ______ CS ______________________(________)

[ ] attached amendment(s)

[ ] adopt Letter of Intent by ________________ Committee

[ ] further referral to the ________________ Committee

Senate Bill:
[ ] same title
[ ] new title

House Bill:
[ ] same title
[ ] technical title
[ ] new: SCR"______

SIGNING DO PASS	*DP*	*OTHER RECOMMENDATIONS*	*NR*	*DNP*	*AM*
[signature]		[signature]	✓		
[signature]	✓				
[signature]	✓				
CHAIR: Rick Halford	✓	*CHAIR:*			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal
	3/19		83.0

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal

[ ] **APPROPRIATION -- no fiscal note**

*include fiscal notes accompanying Governor's bill

SENATOR LOREN LEMAN

Northwest Anchorage

716 W 4th Ave, Suite 520, Anchorage, AK 99501 (907) 258-8189
Web Site: http://www.akrepublicans.org/Leman.htm

Session: State Capitol, Juneau, AK 99801 (907) 465-2095
Email: Senator_Loren_Leman@legis.state.ak.us

Sponsor Statement
SB 299: Well Test Flares & Nonroad Engines

Senate Bill 299 clarifies Alaska's air quality control program as it relates to the treatment of stationary and mobile sources of emissions in air quality control permitting. This legislation does not create an exemption from the Clean Air Act. It simply codifies in state statute the federally recognized distinction between mobile and stationary emission sources.

I sponsored this bill because as a member of the subcommittee that wrote the state's implementation of the Clean Air Act in 1993, I was aware that some issues would have to be resolved later. One of the major issues not addressed in the state's current air quality program was the treatment of stationary vs. **mobile** sources of emissions in air quality control permitting. I have monitored the Department of Environmental Conservation's public meetings on this subject over the last four years. Although the DEC has made this issue difficult, it can be resolved simply - by adopting the federal standard.

As early as 1990, the Environmental Protection Agency formally recognized a distinction between mobile and stationery sources of emissions. Most stationary sources are determined to be significant sources of emissions; ALL **mobile** sources have been determined by federal statutes and regs as **insignificant** and therefore outside of Title V permitting (under the Clean Air Act).

The ADEC regulators do not distinguish between mobile and stationary sources of emissions when determining whether an air quality control permit is required. Although state regulations clearly require ADEC to take into consideration the mobility of emission sources when determining whether to regulate those emissions, ADEC, in practice continues to treat mobile and stationary sources alike.

The federal program recognizes that the same emission control technologies used for oil and gas refineries and power plants <u>(stationary sources)</u> are not suitable for **mobile** applications like lawn mowers, snow machines, bulldozers, transportation engines, and marine vessels. The cost, as well as the size and weight of emission control technologies such as exhaust scrubbers, and emission collection systems limit their use with mobile sources of emissions. All **mobile** equipment must be manufactured to meet the EPA established emissions standards. So, appropriate emission control technologies are built into the mobile equipment as opposed to requiring modification of the equipment at the time of initiating operations.

The problem with the situation as it is now is that it results in confusion in the application of state law when stationary and mobile sources of emissions are regulated under the same permitting program. For example, the holder of the operating permit for the production fa[illegible] does **not own or operate the mobile sources** of emissions that have been included on the permit.

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. SB -299

Revision Date	3/19/98 (corrected)	Dept. Affected	Environmental Conservation
Title	Well Test Flares and nonroad engines	BRU	Air and Water
		Component	Air Quality
Sponsor	Senator Leman		
Requester	Senate Resources Committee	Component Serial No.	2061

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services	59.9	0.0	0.0	0.0	0.0	0.0
Travel	5.5	0.0	0.0	0.0	0.0	0.0
Contractual	17.6	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	33.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ( )	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
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	33.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (Specify Type)	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	33.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY98) cost: 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

ANALYSIS: *(Attach a separate page if necessary)*

See attached detail

Prepared by	John Stone	Phone	465-5103
Division	Air and Water	Date	3/14/98
Approved by Commissioner	[signature]	Date	
Agency	Department of Environmental Conservation		

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Analysis: Fiscal Note for SB 299

Although the bill will reduce staff workload by eliminating the need for some permits, the department is estimating that this reduction will be ten permits per year. Given the current permitting backlog of approximately 200 permits, the workload reduction would be negligible over the next five years, and so would not result in any reduction in staffing levels or expenditures. Another consideration would be the impact of changing the air quality regulations in 18 AAC 50 to be consistent with the provisions of the bill. Regulation changes of this magnitude, involving the Department of Law and a public hearing process, are estimated to cost between $75,000 and $100.000, and the increased workload would add to the current permitting backlog unless another position were added. The bill is also expected to increase third-party adjudication of permit disputes, as well as federal intervention, though the long-term impact of this is currently unknown.

Regulation change cost breakdown

Category	Description	Amount	Total
Personal Services	One Environmental Specialist III (Range 18) for regulation development	1.0 FTE	59.9
Travel	2 trips to Anchorage, Fairbanks, Ketchikan for public hearings	4 @ $1000. 2 @ $750	5.5
Contractual	Department of Law consultations and regulation review	50 hours @ $93.50	4.7
	Advertising - public notices required for regulation changes	5 papers/ twice/ @ $300	3.0
	Contractual costs associated with position	(phone, photocopying, lease costs, postage. etc.)	5.9
	Public hearings required for new regulations		
	Room rental for public hearings	6 @ $250	1.5
	Hearing officer for public hearings	6 @ $250	1.5
	Publication of new regulations		1.0
		Total	**83.0**

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. SB -299

Revision Date (Note if correction) 3/18/98
Title: Well Test Flares and nonroad engines
Sponsor: Senator Leman
Requester: Senate Resources Committee

Dept. Affected: Environmental Conservation
BRU: Air and Water
Component: Air Quality
Component Serial No. 2061

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services	65.9	0.0	0.0	0.0	0.0	0.0
Travel	5.5	0.0	0.0	0.0	0.0	0.0
Contractual	11.6	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	83.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ( )	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
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	83.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (Specify Type)	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	83.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY98) cost: 0.0

POSITIONS

POSITIONS	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Full-time	1	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: *(Attach a separate page if necessary)*

See attached detail

Prepared by: John Stone — Phone: 465-5103
Division: Air and Water — Date: 3/14/98

Approved by Commissioner — Date: 3/18/98
Agency: Department of Environmental Conservation

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Analysis: Fiscal Note for SB 299

Although the bill will reduce staff workload by eliminating the need for some permits, the department is estimating that this reduction will be ten permits per year. Given the current permitting backlog of approximately 200 permits, the workload reduction would be negligible over the next five years, and so would not result in any reduction in staffing levels or expenditures. Another consideration would be the impact of changing the air quality regulations in 18 AAC 50 to be consistent with the provisions of the bill. Regulation changes of this magnitude, involving the Department of Law and a public hearing process, are estimated to cost between $75,000 and $100,000, and the increased workload would add to the current permitting backlog unless another position were added. The bill is also expected to increase third-party adjudication of permit disputes, as well as federal intervention, though the long-term impact of this is currently unknown.

Regulation change cost breakdown

PCN 18-#028 w/indirect @ 9.86%	1.0 FTE	65.9
Travel	statewide	5.5
DOL review	50 hours @ 93.50	4.7
Advertising - public notices	5 papers/ twice/ @ $300	3.0
Public hearings		
room rental	4 @ $250	1.0
hearing officer	4 @ $250	1.0
Publication of new regulations		1.9
		83.0

```
POSITION INFORMATION HAS BEEN UPDATED AND FUNDING HAS BEEN UPDATED.
 03/18/98        Position Information Inquiry/Update     Prior          15:02:21
                                                       Yr Actual      Budgeted
 Position: 18-18#028        Project: 0____        Salary:          0    44,772.00
 Comp: 18-30-00-00-00-60    Region: _             Benefits:        0    15,149.31
 Scenario:   2    FY: 99    COLA %: 0.000         Total:           0    59,921.31
-----------------------------------------------------
Actuals not available    (Status: UNKNOWN  ) FLSA:   |     Retirement Code:   A
-------   ------------------------------------------
          | Step: B for 12.0 months & Step: C for _0.0 months (total: 12.00 )
 00/00/00 | Merit Date; use merit defaults?  N          (  0.0 @    &  0.0 @    )
 0        | Class/Sched Prefix: 2                   Schedule: 2A (actual:     )
          | Bargaining Unit:     GG                 Range:    18 (actual:     )
          | Location Code:       AWA    Place: JUNEAU
          | Job Class Code:      P8656  Title: ENV ENG ASSOCIATE____________
          | Seasonal Indic.:     F      Type:       -
-----------
Optional Override Salary Rates:
 Monthly Rate: 0.00____  for _0.0 months & rate of 0.00____  for _0.0 months
 Hourly Rate:  0.00____  for _0.0 months        Frozen at this rate? (Y/N): N

 Press ENTER to update record; enter # or use PF key to go to another screen:
 1=Premium pay info    2=Funding info     4=Code Translations  6=Calculations
 7=MISC NEW POS DATA   8=Detail Report   12=Exit w/o update    Selection: 0_
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MAR 20 1998

THE ALASKA CHAPTER
OF THE
INTERNATIONAL
ASSOCIATION OF
DRILLING CONTRACTORS

Mailing Address: P.O. Box 240845
Anchorage, Alaska 99524-0845

March 20, 1998

The Honorable Rick Halford
Alaska State Legislature
Chairman, Senate Resources Committee
State Capitol
Room 121
Juneau, Alaska 99801

Re: **SB 299, "An Act relating to the treatment of well test flares, nonroad engines, and aggregated fuel burning equipment associated with nonroad engines under the state's air quality control program; defining 'stationary source' for purposes of the state's air quality program."**

Dear Senator Halford:

In the course of events leading up to the implementation of the state's current air quality control program (AS 46.14 and 18 AAC 50), many issues were brought forward and debated amongst the state and federal regulators and the regulated community. Some of those issues were addressed in statute and regulation -- others were not.

One of the major issues not addressed in the state's current air quality program was the treatment of stationary vs. mobile sources of emissions in air quality control permitting.

The federal Clean Air Act recognizes a distinction between stationary and mobile emission sources and includes sections addressing each separately. In other words, the federal program controls (regulates) emissions from stationary sources (e.g., an oil and gas refinery) through an air quality control permitting process. This process requires the operator of the facility to submit an application and demonstrate their compliance with air quality standards which are established by the federal Clean Air Act. If the operator can not demonstrate that air quality standards will be achieved, permit restrictions are imposed which will force compliance. The permit restrictions imposed may require the addition of control technologies for the elimination or reduction of certain types of emissions. These control technologies may include exhaust scrubbers, emission collection systems, etc. Typically, these emission control technologies are capital intensive, require special engineering considerations due to their large size and weight, and are specifically designed for use with stationary equipment.

With regard to mobile sources of emissions (e.g., transportation engines, marine vessels, locomotives, lawn mowers, snow machines, snowblowers, construction cranes, bulldozers, etc.), the

federal program recognizes that the same emission control technologies used for stationary sources are not suitable for mobile application. The primary reasons for the unsuitability of those emission control technologies is the cost, as well as the large size and weight of those technologies.

Recognizing these limitations, EPA developed alternative methods of regulating emissions from mobile sources. EPA determined the most appropriate way to control emissions from mobile sources was to develop and institute emission control standards applicable to the manufacture of mobile equipment. In other words, all mobile equipment must be manufactured to meet the EPA established emissions standards. Appropriate emission control technologies, therefore, are built into the mobile equipment as opposed to requiring modification of the mobile equipment at the time of initiating operations.

The ADEC regulators do not distinguish between mobile and stationary sources of emissions when determining whether an air quality control permit is required. See, e.g., October 20, 1997 letter from John Stone, ADEC, to Mike Krupa, IADC ("Mobility is not a factor that is used to determine if equipment is a source [subject to regulation]."). Although Mr. Stone indicates that mobility is not a factor, the concept of mobility has been introduced into the state regulatory framework and does effect ADEC's ability to regulate emissions from these sources. See 18 AAC 50.100 ("The actual and potential emissions of nonroad engines are not included when determining the classification of a facility or modification . . . ."); see also 18 AAC 50.990 (40) ("'fuel-burning equipment' means a combustion device capable of emission, including flares, but excluding **mobile** internal combustion engines . . . .") (emphasis added); 18 AAC 50.990 (56) ("'nonroad engine' has the meaning given in 40 C.F.R. 89.2, as amended through December 19, 1996, adopted by reference."). To qualify as a nonroad engine under the federal definition the internal combustion engine must be "self propelled", "intended to be propelled", "portable or transportable, meaning designed to be and capable of being carried or moved from one location to another." Although the state regulations clearly require ADEC to take into consideration the mobility of emission sources when determining whether to regulate those emissions, ADEC, in practice, continues to treat mobile and stationary sources alike.

As a result of ADEC's failure to recognize the distinctions between stationary and mobile emission sources, ADEC bundles these two different emission sources together and attempts to regulate emissions from mobile sources through a permitting process specifically intended for application to stationary sources (e.g., construction permits, operating permits, temporary operations permits, etc.). This failure results in confusion in the application of state law when stationary and mobile sources of emissions are regulated under the stationary permitting program.

For example, at one location on the North Slope, an operator holds an air quality control permit ("operating permit") for an oil and gas production facility (a stationary source of emissions). In addition to operating restrictions on stationary equipment permanently located at the permitted production facility, the air quality control permit for that production facility includes operating restrictions on a number of the mobile sources (i.e., nonroad engines) which occasionally operate in the vicinity of the permitted facility. ADEC has included these mobile sources in the operating permit as "stationary sources", and has imposed operating restrictions on those mobile sources despite the fact that ADEC maintains mobile sources are not required to be permitted. See March 3, 1997 letter from John Stone, ADEC, to Janet Platt, BPXA ("In your letter, you concluded that nonroad engines are not regulated sources requiring identification or any other authorization to

construct or operate under the Department of Environmental Conservation's air quality laws and regulations. At present, your conclusion is correct, including your interpretation of the 40 C.F.R 89.2 definition.").

This confusion is exacerbated by the fact that the holder of the operating permit for the production facility does not own or operate the mobile sources of emissions which have been included as "stationary sources" on their permit. In light of the significant civil penalties which may be imposed for violations of air quality control permit restrictions, the fact that equipment which is not owned or operated by the permit holder is included on the permit creates a question of ultimate liability for permit violations.

A further point of confusion using this specific example is that the permit restrictions imposed on the mobile sources of emissions by the operating permit for the production facility are enforced even when the mobile sources are operating outside of the location specifically permitted. In other words, the operating permit was issued for a specific location, yet under ADEC's implementation of the air quality control program, the permit restrictions extend to the mobile sources pursuant to the specific provisions of the permit and are applicable to that mobile equipment even when it is outside of the permitted area. In effect, ADEC is permitting mobile emission sources in disregard of its own regulations and the federal Clean Air Act guidelines.

SB 299, which was introduced by Senator Loren Leman, is intended to codify in state statute the federally recognized distinction between mobile and stationary emission sources. Passage of SB 299 will prevent mobile sources from being permitted as stationary sources. SB 299 also will simplify the stationary source permitting process by disallowing consideration of nonroad engine emissions in a stationary source permit determination. In summary, SB 299 will require that ADEC treat mobile sources (i.e., nonroad engines) as insignificant activities in accordance with EPA federal operating permit program regulations.

The Alaska Chapter of the International Association of Drilling Contractors encourages your favorable consideration of SB 299. Please contact me, Russ Douglass (563.5530 x-22) or Kyle Parker (566.1220) should you have any questions regarding SB 299.

Thank you for your time and effort regarding this matter, and your continued support of the Alaska oil and gas drilling industry.

Sincerely,

Mike Krupa
Director, Alaska Chapter
907.563.5530 x-22

THE ALASKA CHAPTER OF THE INTERNATIONAL ASSOCIATION OF DRILLING CONTRACTORS

Mailing Address: P.O. Box 240845
Anchorage, Alaska 99524-0845

RESOLUTION 98-1

WHEREAS: The State of Alaska has primacy over the federal Prevention of Significant Deterioration (PSD) and Title V permitting programs, and implements these programs pursuant to the requirements of the federal Clean Air Act.

WHEREAS: These programs, as established by the United States Congress and the federal Environmental Protection Agency (EPA), are designed and intended for permitting major stationary sources such as cement plants, municipal incinerators, petroleum refineries, chemical plants, crude oil and refined product tank farms, etc.

WHEREAS: The 1990 Amendments to the federal Clean Air Act recognize a category of emission sources identified as "nonroad engines" (e.g., lawnmowers, snow blowers, snow mobiles, construction cranes, bulldozers, etc.), which are mobile emission sources that should not be permitted as stationary sources.

WHEREAS: EPA recognizes that the emission control technologies applicable to stationary sources are different than those applicable to mobile sources and, therefore, allows mobile sources to be classified as "insignificant activities," which are outside of the stationary source permitting framework.

WHEREAS: Although the federal definition of nonroad engines (i.e., mobile, internal combustion engines) is adopted by reference in State regulation, the State Department of Environmental Conservation (ADEC) continues to permit nonroad engines (i.e., mobile sources) as stationary sources.

WHEREAS: The nonroad engine/mobile source issue has been a point of contention between the regulated community and the ADEC for at least the past three years and has yet to be resolved.

WHEREAS: On the North Slope of Alaska worst case emissions from drilling operations comprise less than 10 percent of total emissions based on a comparison of figures from stationary source air quality permits.

WHEREAS: North Slope drilling contractors have significantly reduced the drilling times for conventional wells thus reducing the amount of air emissions per well.

WHEREAS: North Slope drilling contractors have fueled their equipment with natural gas where appropriate, further reducing certain air emissions.

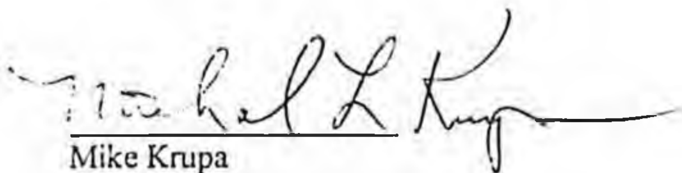
WHEREAS: North Slope drilling contractors have equipped their rigs with the capability to run on electricity generated at a central facility when available, further reducing drilling rig emissions.

WHEREAS: Air monitoring data reveal no ambient air quality problem anywhere on the North Slope of Alaska.

NOW, THEREFORE, BE IT RESOLVED: The Alaska Chapter of the International Association of Drilling Contractors (IADC) supports the passage of Senate Bill 299 which removes nonroad engines from stationary source permitting in accordance with the federal Clean Air Act.

BE IT FURTHER RESOLVED: The IADC supports the workgroup effort initiated by the Alaska Oil and Gas Association to the extent that, after collecting operational data sufficient to determine whether emissions from nonroad engines significantly effect ambient air quality, the resulting operational restrictions developed are economically feasible, based on sound science, meet EPA minimum requirements and are applicable throughout Alaska.

Resolution 98-1 was adopted by a unanimous vote of the Board of Directors of the Alaska Chapter of the International Association of Drilling Contractors on the16th day of March,1998.



Mike Krupa
Director, Alaska Chapter

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POSITION INFORMATION HAS BEEN UPDATED AND FUNDING HAS BEEN UPDATED.
 03/18/98        Position Information Inquiry/Update      Prior        15:02:21
                                                        Yr Actual      Budgeted
 Position: 18-18#028       Project: 0____       Salary:           0     44,772.00
 Comp: 18-30-00-00-00-60   Region:  _           Benefits:         0     15,149.31
 Scenario:   2    FY: 99   COLA %: 0.000        Total:            0     59,921.31
-----------------------------------------------------
Actuals not available   (Status: UNKNOWN  ) FLSA:  |    Retirement Code:   A
-------   -------------------------------------------
          | Step: B for 12.0 months & Step: C for _0.0 months (total: 12.00 )
 00/00/00 | Merit Date; use merit defaults?  N         (  0.0 @   &  0.0 @   )
 0        | Class/Sched Prefix: 2                   Schedule: 2A (actual:    )
          | Bargaining Unit:    GG                  Range:    18 (actual:    )
          | Location Code:      AWA    Place: JUNEAU
          | Job Class Code:     P8656  Title: ENV ENG ASSOCIATE_____________
          | Seasonal Indic.:    F      Type:       -
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Optional Override Salary Rates:
 Monthly Rate: 0.00____  for _0.0 months & rate of 0.00____  for _0.0 months
 Hourly Rate:  0.00____  for _0.0 months         Frozen at this rate? (Y/N): N

 Press ENTER to update record; enter # or use PF key to go to another screen:
 1=Premium pay info    2=Funding info     4=Code Translations   6=Calculations
 7=MISC NEW POS DATA   8=Detail Report    12=Exit w/o update    Selection: 0_
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Alaska Community Action on Toxics
135 Christensen Drive
Anchorage, Alaska 99501
(907) 222-7714 (phone); (907) 222-7715
e-mail: acat@akcf.org

Testimony on SB 299
March 20, 1998

Alaska Community Action on Toxics is a program of the Alaska Conservation Foundation. Alaska Community Action on Toxics seeks to protect human health and the environment from the toxic effects of contaminants. We work to ensure responsible cleanup of contaminated sites. We strive to stop the production, proliferation, and release of toxic chemicals.

We are opposed to SB 299 because it exempts significant sources of air pollution from permit requirements and regulatory oversight. We believe that this bill would lead to adverse impacts on human health and the environment. This bill violates requirements under the Clean Air Act and jeopardizes our state's implementation of the Act as delegated by federal law. This bill so blatantly ignores provisions of the Clean Air Act that federal takeover of management of Alaska's air resources would be inevitable if this bill were to pass.

Some of the facilities proposed by this bill for exemption include some of the largest sources of air pollution, including: well test flares used to dispose of oil and gas wastes, diesel engines used to power drill rigs, asphalt plants, dirt burners, power plants, and mines. Hazardous air pollutants from these facilities are known to cause acute and chronic respiratory illnesses: soot, carbon monoxide, nitrogen oxides, sulfur dioxide, and volatile organic chemicals. Some of the facilities burning hazardous wastes produce cancer-causing air pollutants such as dioxins and furans—these substances cause endocrine disruption, reproductive disorders, and other serious health effects at extremely low concentrations.

We believe that this bill will have adverse economic consequences including the imposition of federal highway fund sanctions. The detrimental health effects resulting from this bill will cause increases in health care costs for Alaskans, particularly those who already suffer from respiratory illnesses such as asthma. Health care officials in the village of Nuiqsut have been concerned over the last several years that air pollution from production facilities at Prudhoe Bay is causing dramatic increases in respiratory illnesses such as asthma, particularly during the air inversions of the winter months. Deregulation of oil facilities and other sources of air pollution in the Cook Inlet area would affect the public health of the greatest concentration of the population in the state. This bill does not consider science or the public health.

We respectfully request that you prevent the institution of this bill.

Pamela Miller, Program Director

IADC SUMMARY OF DOCUMENTS SUBMITTED IN SUPPORT OF SB 299

I. Relevant Excerpts from the EPA Regulations Implementing the Clean Air Act Amendments of 1990.

- 40 C.F.R. Part 71, section 71.2. Definition of "insignificant activity or emissions" -- establishes an exemption from the documentation and reporting requirements of the federal operating permit program (Clean Air Act, Title V Stationary Source Permitting (implemented in 40 C.F.R. Part 71, section 71.5)).

- 40 C.F.R. Part 71, section 71.5. This section of the federal operating permit program qualifies mobile sources as insignificant activities.

- 40 C.F.R. Part 89, Subpart A, section 89.2. Definition of "nonroad engines" -- establishing a nonroad engine as a mobile source.

NOTE: These sections of the federal regulations clearly establish that nonroad engines are mobile sources (NOT stationary sources), which are insignificant activities not subject to the federal operating permit program.

Pursuant to the 1990 Clean Air Act Amendments, EPA cannot require states to directly regulate nonroad engines under programs designed to regulate stationary sources.

II. December 30, 1997 Direct Final Rule.

- The December 30, 1997 Direct Final Rule clarifies that the nonroad engine preemption of the 1990 Clean Air Act Amendments applies to ALL nonroad engines and nonroad vehicles, not just those manufactured after 1990. (The nonroad engine preemption of the 1990 Clean Air is codified in section 209(e), which states, in pertinent part, "All states are preempted from adopting emission standards and other requirements for new nonroad engines . . . .").

- The December 30, 1997 Direct Final Rule further explains how states MAY adopt and enforce emissions standards for nonroad engines and vehicles, and establishes a procedure for promulgating such regulations beyond the federal minimum requirements.

NOTE: The December 30, 1997 Direct Final Rule **DOES NOT** mandate that states adopt and enforce standards and other requirements for nonroad engines. The Direct Final Rule simply says that states "may" develop nonroad engine emission restrictions beyond those established by the Clean Air Act. Only California has adopted such restrictions in excess of the federal minimums.

III. Undated Summary of other oil producing states' treatment of drilling rig engines.

- A survey of other oil producing states' air quality control statutes and regulations demonstrates that these states have embraced the federal mandate that mobile emission sources (i.e., nonroad engines) be regulated at the point of manufacture and need not be further regulated under the Clean Air Act stationary source permitting program.

- Only four states have addressed drilling rig engine emissions in statute or regulation. Three states (Colorado, Montana and North Dakota) specifically have exempted drilling rig engines from permitting requirements. The fourth state (Texas) only requires a permit if an engine stays at a location longer than six months.

VI. February 21, 1997 letter from Janet Platt (BPXA) to John Stone (ADEC).

- In this letter, BPXA concludes that "nonroad engines are not regulated sources requiring identification or any other authorization to construct or operate under the ADEC's air quality laws and regulations."

V. March 3, 1997 letter from John Stone (ADEC) to Janet Platt (BPXA).

- Quoting directly from BPXA's February 21, 1997 letter, ADEC confirms BPXA's conclusion that "nonroad engines are not regulated sources requiring identification or any other authorization to construct or operate under the Department of Environmental Conservation's air quality laws and regulations."

VI. July 24, 1997 letter from Michael Conway (ADEC) to Steven Taylor (BPXA).

- This letter from ADEC, dated July 24, 1997, states that ADEC "is committed to working a longer term solution to this issue with all interested parties by establishing and leading a workgroup." Despite ADEC's July 24, 1997 commitment to establish a workgroup to address the nonroad engine issue, no such action has taken place.

NOTE: As of the date of this ADEC letter (July 24, 1997), the nonroad engine issue had been under consideration by ADEC since at least early 1996.

VII. September 23, 1997 letter from John Stone (ADEC) to Bonnie Thie (EPA Region 10).

- In this letter, ADEC states that mobile internal combustion engines (e.g., nonroad engines) are specifically exempt from being considered as fuel-burning equipment.

VIII. December 29, 1997 letter from John Stone (ADEC) to Janet Platt (BPXA).

- Notwithstanding ADEC's September 23, 1997 letter to EPA, in this December 29, 1997 letter, ADEC contends that nonroad engines are considered to be fuel-burning equipment.

IX. March 16, 1998 IADC Board Resolution 98-1.

- By a unanimous vote, the Board of Directors of the Alaska Chapter of the International Association of Drilling Contractors voted to support passage of SB 299.

The following letters show the changing position and advice to permitees by the Alaska Department of Environmental Conservation.

Letter #1 (2/21/97):

From BP Exploration to John Stone, ADEC Division of Air and Water Quality, "seeking clarification on permit requirements". BP states that Alaska has adopted the federal definition of nonroad engines, which includes "any internal combustion engine: (I) in or on a piece of equipment that is self-propelled or serves a dual purpose by both propelling itself and performing another function."

Letter #2 (3/3/97):

From John Stone, ADEC, to BP Exploration stating that BP's analysis of nonroad engines is correct. Cautioning that if an air quality analysis were required for a construction permit, then the effect of nonroad engines must be accounted for like any other "associated growth".

Letter #3 (7/24/97):

From Mike Conway, ADEC to BP Exploration stating that

- nonroad engine emissions are exempt from being counted against threshold quantities for permit applicability purposes;
- the guidance ADEC is relying on was developed for contractors at federal military installations.
- ADEC is prepared as of July 1997 to establish and lead a work group for a "solution".

Letter #4 (9/23/97):

From John Stone, ADEC, to U.S. EPA Region 10, asking for assistance to help ADEC to "make changes to Alaska regulations to eliminate confusion over nonroad engines". He states Alaska's definition of fuel-burning equipment specifically exempts mobile internal combustion engines. He asks EPA's opinion whether Alaska standards no longer apply to nonroad engines in Alaska.

Letter #5 (12/29/97):

From John Stone, ADEC to BP Exploration stating that now, in his opinion, nonroad engines will have to be factored into a facility (stationary) permit.

BP EXPLORATION

BP Exploration (Alaska) Inc.
900 East Benson Boulevard
P.O. Box 196612
Anchorage, Alaska 99519-6612
(907) 561-5111

By Certified Mail # P423 342 031

See J. Stone ltr. (3/3/97) confirming BPXA positions herein.

February 21, 1997

Mr. John Stone
Alaska Department of Environmental Conservation
Division of Air and Water Quality
410 Willoughby Avenue, Suite 105
Juneau, AK 99801-1795

Niakuk Development Drilling
Request for Determination on Air Permit Requirements

Dear Mr. Stone:

BP Exploration (Alaska) Inc. (BPX) has retained a contractor to drill production wells at the Niakuk Development on the North Slope of Alaska. Drilling has been ongoing at Niakuk's Heald Point since April 20, 1996 with only occasional interruptions to move the rig to a new well or conduct rig maintenance.

Prior to the commencement of drilling, BPX contacted the Alaska Department of Environmental Conservation's (ADEC) air quality staff about potential air permit requirements. We were advised that no air quality construction permit would be required for drilling operations because the rig is an existing facility, but that the rig may need an air operating permit one year after Alaska's Title V program is approved by the EPA. Since EPA approved the Alaska program on December 5, 1996, and since the ADEC recently issued new air quality regulations, BPX is now seeking clarification on permit requirements.

Nonroad Engine Definition

According the new Alaska air quality regulations, emissions from "nonroad engines" are not included when determining the classification of a facility or modification under AS 46.14.130, 18 AAC 50.300, or 18 AAC 50.325. (See 18 AAC 50.100.) Alaska has adopted the federal definition of nonroad engines, which includes "any internal combustion engine: (i) in or on a piece of equipment that is self-propelled or serves a dual purpose by both propelling itself and performing another function." (40 CFR 89.2(1)) The drilling rig at Heald Point, Pool Arctic Alaska Rig No. 7, is self-propelled, and therefore BPX understand that all engines located in or on it are "nonroad engines."

Over the past year BPX has participated in discussions with the ADEC suggesting that classification as a nonroad engine may be limited to 12 months at one location. We do not read the nonroad engine definition in 40 CFR 89.2 to limit self-propelled engines classified under (1)(i) to 12 months at a single location. Please advise if ADEC's interpretation differs from 40 CFR 89.2.

If nonroad engines are excluded from the calculation of actual and potential emissions, the potential to emit for Pool Rig 7 is less than 20 tons per year (tpy) as long as a well testing flare is not employed. This emission rate is less than the construction and operating permit thresholds of 250 tpy and 100 tpy, respectively, and none of the other permit categories apply. Therefore, BPX believes that no air quality permits under AS 46.14.120 are required for Pool Rig 7 at Niakuk.

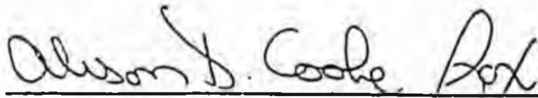
Nonroad Engine Applicable Requirements

In a public meeting on February 12, 1997, you stated that the Alaska State Implementation Plan (SIP) general emission limits for opacity, grain loading, and sulfur dioxide concentration do not apply to nonroad engines. We understand that this exemption is based on recent court cases interpreting Section 209 of the Clean Air Act, which generally prohibits states from applying emission standards to nonroad engines unless certain procedural steps are followed.

If SIP limits do not apply to nonroad engines, and the owner or operator has not requested voluntary limits, BPX is unaware of any applicable air quality requirements for nonroad engines. As such, nonroad engines are not regulated sources requiring identification or any other authorization to construct or operate under the ADEC's air quality laws and regulations. Please advise if you disagree with this interpretation.

If you have any questions or comments, please contact Ms. Alison Cooke at (907) 564-4838.

Sincerely,



Janet D. Platt, Supervisor Compliance
Environmental and Regulatory Affairs

cc: Alfred Bohn, ADEC, Anchorage
Jim Baumgartner, ADEC, Juneau

JFK

STATE OF ALASKA

TONY KNOWLES, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION

Division of Air and Water Quality
410 Willoughby Avenue, Suite 105
Juneau, Alaska 99801-1795

Telephone: (907) 465-5100
Fax: (907) 465-5129
TTY: (907) 465-5010

March 3, 1997

Ms. Janet D. Platt
Environmental and Regulatory Affairs
BP Exploration (Alaska), Inc.
900 East Benson Boulevard
P.O. Box 196612
Anchorage, AK 99501-6612

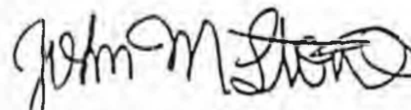
Dear Ms. Platt:

This letter answers your February 21, 1997 request for determination on air permit requirements. In your letter, you concluded that nonroad engines are not regulated sources requiring identification or any other authorization to construct or operate under the Department of Environmental Conservation's air quality laws and regulations. At present, your conclusion is correct, including your interpretation of the 40 CFR 89.2 definition.

Please be aware, however, that a facility could need a permit for sources other than nonroad engines. Such a permit would not identify or regulate the nonroad engines. However, if an air quality analysis were required for a construction permit, then the effect of nonroad engines must be accounted for in the analysis just like any other "associated growth." *

I trust that this letter answers your questions. The Department is continuing to examine nonroad engine emissions and our regulations may change as a result of that analysis. If you have any questions or comments, please contact Mr. John Kuterbach at (907) 465-5118, or by email at jkuterba@envircon.state.ak.us.

Sincerely,



John M. Stone, Chief
Air Quality Maintenance Section

JMS/JFK/pal (h:\air\jkuterba\typing\platt.ltr)

cc: Alfred K. Bohn, ADEC/AQM, Anchorage
Jim Baumgartner, ADEC/AQM
John F. Kuterbach, ADEC/AQM
Robert W. Hughes, ADEC/AQM

* See ARCO ltr. (8/29/97) re: "associated growth"

Allison Lacie

Karen Thomas

TONY KNOWLES, GOVERNOR

CC M. Berlinger
J. Turnbull
Jacobs
Jogan
Pool

DEPT. OF ENVIRONMENTAL CONSERVATION

DIVISION OF AIR & WATER QUALITY
410 Willoughby Avenue, Suite 105
Juneau, Alaska 99801-1795 Juneau, Alaska 99801-1795

Phone: (907) 465-5260
Fax: (907) 465-5274
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July 24, 1997

Mr. Steven Taylor, Manager
Environmental and Regulatory Affairs, Alaska
BP Exploration (Alaska), Inc.
P.O. Box 196612
Anchorage, AK 99519-6612

Dear Mr. Taylor:

I am providing a summary and clarification of the Department's policy on the regulatory treatment of North Slope drilling operations. I am also providing recommendations for BP Exploration (Alaska), Inc. (BPX) to help the Department continue policy development so that drilling operations are handled in a common sense fashion. We hope this letter addresses the outstanding issues presented by you and your staff on June 10 and July 1, and from my July 14, 1997 letter.

First, we appreciate BPX's willingness to address these difficult regulatory issues in good faith. We look forward to building upon our good working relationship as discussions continue to resolve the issues that lie ahead.

A summary of the Department's regulations for the treatment of drilling operations follows:

- The owner or operator of a drilling operation needs a construction or operating permit if the operation is a facility requiring a permit by Alaska Statutes and regulations. By regulations effective January 18, 1997, we have exempted the emissions of non-road engines from being counted against the threshold quantities for permit applicability purposes. All other emissions sources are counted against the threshold quantities for permit applicability in accordance with 18 AAC 50.210. The federal analogue for this exemption is contained in 40 CFR 52.21(b)(4) and (b)(18).
- We have mutually agreed that in some cases the drilling contractors are required to obtain necessary permits; not the lease holder or the production facility operator. Additionally, the Department agrees to use EPA guidance when determining who must

obtain the necessary permits. Although this guidance was developed for contractors at federal military installations, we believe it is an equitable way to handle this issue on the North Slope. A copy of this guidance is enclosed for your reference.

- If a project requires a permit under the State's Prevention of Significant Deterioration Program (PSD), then the permit application must address the proposed drilling operations as required by State regulation. There are two scenarios for how the emissions are addressed. First, if a proposed drilling operation is under the common control or ownership of the permit applicant, then the emissions are part of the facility and must be considered in the application as described in 18 AAC 50.310(d)(1-4). Second, if a drilling operation will occur as a result of a project, but is not under the common control or ownership of the permit applicant, then the emissions from the drilling operation are considered associated growth. The emissions must be considered in the application as described in 18 AAC 50.310(d)(2) and (4). If emissions control from non-road engines is necessary to ensure that the project does not cause or contribute to a violation of the ambient standards or increments, then the Department can only impose "in-use" emission controls, such as restrictions on fuel quality and quantity. This is a result of 1990 changes in Section 209 of the 1990 Clean Air Act, and the interpretation of the section by EPA and the courts. *See Engine Manufacturers Ass'n v. U.S. Environmental Protection Agency*, 88 F.3d, 1075, 1093-94 (D.C. Cir. 1996).

In an effort to implement these regulations in a common sense fashion, the Department has identified the following ways to use our regulatory flexibility in the short term:

- In situations where existing permits do not include authorization for historical drilling activities, the Department will use the approach set forth in our May 1, 1997 letter to you on Milne Point Pad E. This letter allowed you to continue the drilling operation pending expeditious submittal of the information required by the applicable regulations.

- In situations where a new drilling project causes a facility to need a non-PSD permit due to a modification of an existing facility, the Department will accept air pollution minimization measures for the drilling activity in lieu of an ambient impact compliance demonstration. The process for implementing this provision needs to be worked out with you.

- In situations where ambient impacts of drilling operations are assessed in PSD applications, we are willing to work closely with you to assure that all reasonable assumptions and dispersion enhancements are included in the analysis. As an example, our staff believe there are further refinements that can occur with the Milne Point application to reduce ambient impacts at low cost.

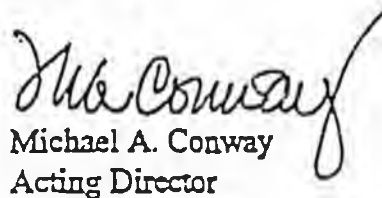
- In situations where all reasonable air pollution minimization efforts are proposed for drilling activities in a PSD application, yet a satisfactory ambient impact analysis cannot be made, the Department will consider other options, such as exclusion zones, in PSD permits.

We are also taking measures to ensure that the above policy is equitably and fairly implemented throughout the North Slope. Towards this end, we are informing other operators of these requirements.

Finally, the Department is committed to working a longer term solution to this issue with all interested parties by establishing and leading a workgroup. Under separate cover, we are transmitting an invitation to BPX for participation in the workgroup. The goal of the workgroup is to reduce air pollution from drilling activities while reducing the administrative regulatory burden, so that drilling activities can proceed in a timely, efficient, and environmentally sound fashion. We expect this process will yield tangible benefits for both the State and the operators, and we will appropriately modify our regulations based upon the agreements reached by the workgroup.

Again, I would like to thank you for BPX's cooperation on this regulatory issue. Please call if you have any questions.

Sincerely,



Michael A. Conway
Acting Director

MAC/JMS/pal (h:\air\jmm\bpdrill.wpd)
Enclosures

cc: Michele Brown, Commissioner, ADEC
Cam Leonard, DOL/AG, Fairbanks
Stephen Daugherty, DOL/AG, Juneau
Brian Hoefler, Hoefler Consulting Group
Bonnie Thie, EPA Region 10, Seattle
Michael J. Frank

Stone/Keading

STATE OF ALASKA

TONY KNOWLES, GOVERNOR

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TTY: (907) 465-5010

September 23, 1997

Ms. Bonnie Thie
U.S. EPA Region 10
1200 Sixth Avenue
Seattle, WA 98101

Dear Ms. Thie:

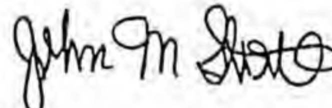
I would like to obtain EPA's opinion on a few new non-road engine issues. Your opinion is needed to provide guidance to Title V permit applicants, and to help us make changes to Alaska regulations to eliminate confusion over non-road engines.

The Alaska SIP contains opacity, particulate matter, and sulfur dioxide emission standards for fuel-burning equipment. Alaska's definition of fuel-burning equipment specifically exempts mobile internal combustion engines. These regulations were developed many years ago and have not been changed in recent years. Alaska traditionally applied these emission standards to internal combustion engines that now qualify as non-road engines. However, as a result of changes to the Clean Air Act, along with the subsequent rulemaking and litigation for non-road engines, it would appear that Alaska should no longer apply these emission standards to non-road engines. Is it EPA's opinion that these emission standards no longer apply to any non-road engines in Alaska?

On a similar matter, Alaska established BACT limits for internal combustion engines that are now non-road engines, through NSR permits. Do these BACT limits still apply to the non-road engine? Can Alaska continue to establish BACT limits for non-road engines with NSR programs, provided BACT is an "in-use" limit?

Please let me know if you have any questions.

Sincerely,



John M. Stone, Chief
Air Quality Maintenance Section

JMS/pal (h:\air\jstone\epanr.wpd)

Printed on recycled paper

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December 29, 1997

Ms. Janet D. Platt

BP Explorations (Alaska), Inc.

P.O. Box 196612

Anchorage, AK 99516-6612

Re: Drill Rig Permitting Applicability

Dear Ms. Platt:

I am responding to your December 16, 1997, lett[illegible] to Bob Hughes requesting an opinion as to whether operating permit applications are required to be submitted for five existing transportable drill rigs. The Department responded to a similar request from the Alaska Chapter of International Association of Drilling Contractors on December 15, 1997. In the letter, I discussed the effect of Alaska=s air quality laws on oil drilling rigs. A copy of that letter is enclosed.

I began my analysis by looking at the classifications for operating permit facilities listed in 18 AAC 50.325(b)-(d). This section of our regulations list the types of facilities that need to submit operating permit applications.

The first type of facility that needs an operating permit is a facility that emits, or has the potential to emit (PTE), 100 tons per year or more of a regulated air contaminant. As you know, the emissions from non-road engines are not included in this calculation. You will need to sum the PTE of all other sources at the generic facility to determine if the 100-ton threshold quantity is exceeded. In the generic permits, it looks like source nos. 20-26 and 28 are included in this calculation. Based upon your letter, it appears you have determined that the PTE of the generic facility is less than the threshold.

The second type of facility that needs an operating permit is a facility that emits or has the potential to emit 10 tons per year or more of a hazardous air contaminant, or 25 tons per year or more of a combination of hazardous air contaminants. This calculation is performed in a manner similar to the 100-ton per year calculation. You will have to perform this calculation, because I do not possess hazardous air contaminant information for the generic facility.

The third type of facility is a facility that is subject to a federal emission standard, such as the NSPS and NESHAPS. As stated in your letter, this classification does not appear to apply to the generic facility.

The fourth category is facilities that are subject to State emission limits in the Port of Anchorage. This provision does not apply to you since the generic facilities are not located in the Port of Anchorage.

See J. Stone ltr. (9/23/97)

* The final category is facilities that are described in 18 AAC 50.300(b)-(e). Subsection (b) contains a paragraph that could apply to your generic facility. A facility containing fuel-burning equipment with a capacity greater than 100 million Btu/hr is classified under (b)(2). By virtue of this classification, the generic facility would need to submit an operating permit application. To perform this calculation, you would need to sum the rated capacity of all fuel-burning equipment at the facility. Please note that non-road engines are included in this calculation. I preliminarily conclude that the generic facility falls within this classification based upon the rating of the flare.

The remaining subsections of 18 AAC 50.300(b)-(e) operate using PTE. Since non-road engines are excluded from this calculation, it is unlikely the generic facility is classified by one of these subsections.

In summary, I conclude that operating permit applications should be submitted for the generic drill rig facilities. My determination is based on a belief that the generic facilities are described by 18 AAC 50.300(b)(2) and classified as operating permit facilities under 18 AAC 50.325(c). Since you have more detailed information on the sources at the generic facility, I recommend that you check my analysis before drawing the same conclusion.

If you have any questions on the above guidance, please contact me at (907) 465-5103.

Sincerely,

John M. Stone, Chief

Air Quality Maintenance Section

JMS/pal (h:\home\jstone\bpxnopmt.wpd)

Enclosure: December 15, 1997, letter to the IADC

cc: Robert W. Hughes, ADEC/AQM, Juneau

Bill MacClarence, ADEC/AQM, Anchorage

Fairbanks ADEC/AQM File

Mike Krupa, IADC

Web Page

DRILLING RIG ENGINES

A. The following states, one way or another, address drilling rig engines in their state construction permit regulations:

1. Colorado: Specifically exempt drilling rig engines from permitting requirements.

2. Montana: Exempt drilling rig engines with the potential to emit less than 100 tpy of any pollutant.

3. North Dakota: There is a provision which exempts oil and gas production facilities from permitting requirements, if the emissions are less than 100 tpy of any criteria pollutant, or 10/25 tpy of HAPs. It is not clear whether this provision covers drilling rigs.

4. Texas: If an engine stays at a location for a duration less than 6 months, it is considered a temporary, not stationary, facility. It is therefore not required to have a permit.

B. Other states reviewed (Kansas, Louisiana, Nebraska, New Mexico, Oklahoma, Utah, and Wyoming): Although regulations in those states are acquiescent with regard to drilling rig engine issue, neither operators nor drilling contractors have ever been required to obtain state construction permits for drilling rig engines. It appears that EPA's definition of a non-road engine are accepted by those states. Since drilling rig engines are considered non-road engines, not stationary sources, state construction permits are not required.

SUMMARY

General Comments

1. Construction permit requirements in ten states have been reviewed: Colorado, Kansas, Louisiana, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, Texas and Utah.

2. All states reviewed require a construction permit for the construction of a new source or modification of an existing source, from which air contaminants are to be emitted.

3. All states reviewed allow exemptions for "de minimis emissions", except for Texas. "De minimis exemptions" exempt constructions or modifications with emissions below certain threshold from permitting process.

4. The construction permit programs in some states allow streamlined permitting process for E&P, such as a standard permit, general permit, standard exemption, streamlined permit, or permit-by-rule. The standard exemptions in Texas more or less fit in this category.

5. General practice by the industry varies depending on state agency's interpretation of the regulations and their enforcement activities. In states where agency does not interpret or enforce the rules to the letter of the law, operators' permitting practice generally reflects agency's interpretation and enforcement policy.

Individual States -- The exemption levels are listed below:

A. Colorado
   1. De minimis emission exemption:
      a. Attainment area: < 5 tpy VOCs or PM10; 10 tpy each or TSP, CO, SO2, NOx; 200 lb/yr lead.
      b. Total facility uncontrolled: < 2 tpy H2S, total reduced sulfur.
   2. "Permit-by-rule": some exemptions in the regulation can be considered as "permit-by-rule":
      a. Internal combustion engines:
         (1) Portable drilling rigs;
         (2) Emergency generators < 250 hrs/yr;
         (3) Emissions < 5 tpy or rated at < 50 hp.
      b. Oil and gas E&P operations shall provide written notice of proposed drilling locations prior to drilling. Air Pollutant Emission Notice are not required until after drilling, workovers, completions, and testing are finished.

B. Kansas

   1. De minimis emission exemption:
      a. A construction permit is required, if the PTE > 15 tpy PM10; 25 tpy PM; 40 tpy SOx, VOC, NOx; 100 tpy CO; 10/25 tpy HAPs.

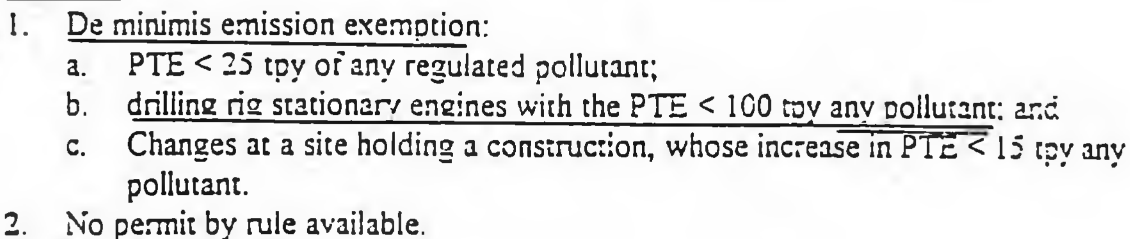
b. An approval is required (even though a permit is not required), if the PTE > 5 lb/hr PM10; 2 lb/hr PM and SOx; 50 lb/hr CO and NOx; 50 lb/hr VOC in attainment area.

2. Currently, there are no general permits for construction permit program.

C. Louisiana

1. De minimis emission exemption: < 5 tpy of any regulated air pollutant, and less than the de minimis emission rate for Louisiana toxic air pollutants (0.13 tpy benzene; 5 tpy each for toluene, ethylbenzene, xylene, and n-hexane).
2. Small source permit (a streamlined process): < 25 tpy of any regulated pollutant.
3. There is a general permit for E&P.

D. Montana



1. De minimis emission exemption:
   a. PTE < 25 tpy of any regulated pollutant;
   b. drilling rig stationary engines with the PTE < 100 tpy any pollutant; and
   c. Changes at a site holding a construction, whose increase in PTE < 15 tpy any pollutant.
2. No permit by rule available.

E. Nebraska

1. De minimis emission exemption: PTE < 15 tpy PM10; 25 tpy PM; 40 tpy VOC, SO2, NOx; 54 tpy CO; 2.5/10 tpy HAPs.
2. No permit by rule available.

F. New Mexico

1. De minimis emission exemption:
   a. 25 tpy or 10 lb/hr of any regulated pollutants.
   b. Non-major HAP sources.
2. Streamlined permitting process allowed for internal combustion engines.

G. North Dakota

1. De minimis emission exemption for oil and gas production facilities: < 100 tpy criteria pollutants, 10/25 tpy HAPs.
2. Exemption for fossil fuel burning equipment which meets all following:
   a. Heat input < 10 MMBtu/hr for a single unit, or all units at the site;
   b. Actual emission < 25 tpy, PTE < 100 tpy any contaminant.

H. Oklahoma

1. De minimis emission exemption: 1) < 1 lb/hr of any criteria pollutant; 2) toxics < de minimis level (benzene: 1200 lb/yr, 0.57 lb/hr); ant 3) not a NSPS or NESHAP source.
2. Many E&P operators follow a streamlined procedure for Title V in addressing pre-construction permit:
   a. Submit a letter only if the PTE 0-50 tpy any criteria pollutant, or 0-5 tpy HAPs.
   b. Submit a letter with supporting documentation if the PTE 50 - 100 tpy any criteria

pollutant, or 5-10 typ HAPs.

I. Texas ["Temporary engines" do not need permit. "Temporary" oil and gas facilities (<90 days) can use Standard Exemption 67.]

1. There are no "de minimis emission exemptions". Standard exemptions are "permit by rule".
2. In general, standard exemptions are allowed for E&P sources if 1) emissions are: <= 250 tpy CO or NOx; 25 tpy VOCs, SO2, PM10 or any other pollutant ; 2) not subject to PSD or non-attainment NSR; 3) at least one unit at the site has been through public notification process; and 4) all conditions of a specific Standard Exemptions (SE #66 for E&P) are met.
3. If a source can not meet all conditions of a standard exemption, it is required to obtain a permit (either a regular permit or a standard). There is a standard permit available for E&P sources. A standard permit is a "permit by rule". If an operator chooses to use the standard permit, he does not need to go through the public notification process, because it has been done during the rule-making.

J. Utah

1. De minimis emission exemption: Exempt from the requirements for notice of intent and approval order, if
   a. PTE < major source threshold (100 tpy criteria; 10/25 tpy HAPs); and
   b. Actual emissions: < 5 tpy criteria pollutants; 500/2000 lb/yr HAPs or non-criteria pollutants.

SB
330

Alaska State Legislature
Senate

Official Business

State Capitol
Juneau, AK. 99801-1182

Senate Labor & Commerce Committee

Sponsor Statement
SB 330: Underground Locate Standards

Senate Bill 330 was introduced at the request of the Alaska Telephone Association to provide an understanding of the standards and responsibilities for locating and excavating underground facilities throughout the state for utilities and contractors.

SB 330 amends AS 42.30 to set out responsibilities for excavators, construction project owners and underground facility owners when a locate is requested. It provides for penalties, including treble damages, if an excavator knowingly or intentionally damages a located underground facility.

Although the Alaska Public Utilities Commission has the authority to create locate standards, it has been a low priority item due to the commission's workload. (See AS 42.05.141 and AS 42.05.291(c)).

Currently, there are some national standards related to the issue of locating and uncovering underground utilities, but nothing as comprehensive as SB 330.

SENATE COMMITTEE REPORT

DATE: 3/23/98

FURTHER:

DATE TURNED IN TO OFFICE: 4/7/98

Resources Committee considered SENATE BILL NO. 330

"An Act relating to underground facilities."

and recommends:

[ ] be **replaced** with ______ CS SB 330 (RES)

[ ] adopt **previous** _____ CS ______________ (________)

[ ] attached amendment(s)

[ ] adopt Letter of Intent by ______________ Committee

[ ] further referral to the ______________ Committee

Senate Bill:
[ ] same title
[X] new title

House Bill:
[ ] same title
[ ] technical title
[ ] new: SCR# ______

SIGNING DO PASS	*DP*
Loren D. Leman	✓
CHAIR:	

OTHER RECOMMENDATIONS	*NR*	*DNP*	*AM*
[signature]	✓		
Lyda Green	✓		
CHAIR: Rick Halford	✓		

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal
S. L&C	3/13	X	

APPLIES TO CS

[ ] **APPROPRIATION -- no fiscal note**

***include fiscal notes accompanying Governor's bill**

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL No. 1
Bill Version: CSSB 330 (L&C)
(S) Publish Date: 3-23-98

Revision Date (Note if correction)
Title: Underground utilities
Sponsor: Senate L&C Committee
Requester: Senate L&C Committee

Dept. Affected: None
BRU
Component
Component Serial No.

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY98) cost: Ø

POSITIONS

POSITIONS	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

There is no fiscal impact on any state department.

Prepared by: A. Kreitzer, Committee Aide
Phone: 465-3844
Division
Date: 3-13-98
Approved by: Senator Loren Leman, Chairman
Date
Agency: (S) Labor and Commerce Committee

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CS FOR SENATE BILL NO. 330( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATE LABOR AND COMMERCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to underground facilities."**

2 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

3 * **Section 1.** AS 42.30 is amended by adding new sections to read:

4 **Article 6. Locating Underground Facilities.**

5 **Sec. 42.30.400. Excavator's notice of proposed excavation.** (a) Before
6 beginning an excavation, an excavator shall give notice of the proposed excavation to
7 each underground facility operator who has an underground facility in the area of the
8 proposed excavation and request the operator to field mark the location of its
9 underground facility. The excavator shall notify an underground facility operator who
10 subscribes to a notification center by giving notice to the center. The excavator shall
11 notify an underground facility operator listed in the applicable telephone directory who
12 is not a subscriber to a notification center by giving notice directly to the operator.
13 (b) Except in the case of an emergency locate request or a request to locate
14 in a remote, unstaffed, or inaccessible location, the excavator shall notify an
15 underground facility operator who may have a facility in the area of a proposed

1 excavation at least two but not more than 15 working days before the date scheduled
2 for beginning the excavation. In the case of a request to locate in a remote or
3 unstaffed location, the excavator shall notify the operator at least 10 but not more than
4 20 working days before the scheduled date for beginning excavation.

5 (c) In an emergency, the excavator shall immediately notify each underground
6 facility operator in the area of the emergency and of the need for the excavation and
7 request prompt location of underground facilities.

8 **Sec. 42.30.410. Operator's response to request to locate; immunity related**
9 **to unmarked or inaccurately marked facilities.** (a) An underground facility
10 operator shall accept requests to locate underground facilities during the operator's
11 regular business hours. An operator who receives a request to locate shall maintain
12 for at least one year an accurate record of the request and responses to the request.

13 (b) When an underground facility operator receives a request to locate, it shall
14 notify the excavator of the location of the underground facilities that the operator is
15 able to field mark with reasonable accuracy and field mark those facilities. If the
16 operator owns, uses, or operates an underground facility that is identified as being in
17 the area of the proposed excavation but that the operator cannot field mark with
18 reasonable accuracy, the operator shall provide the excavator with the best information
19 available to the operator about its location and shall provide on-site assistance until the
20 facility is located or until the excavator no longer needs assistance in locating that
21 facility.

22 (c) The field marks for an underground facility buried 10 feet deep or less
23 must be located within 24 horizontal inches of the outside dimensions of the facility.
24 For a facility buried deeper than 10 feet, the operator shall locate the field marks
25 within 30 horizontal inches of the outside dimensions of the facility. The operator
26 shall use stakes, paint, or other clearly identifiable material to show the field location
27 of the underground facility. The marker used to designate the approximate location
28 of an underground facility must follow the current color code standard used by the
29 American Public Works Association.

30 (d) Except for an underground facility in a remote, unstaffed, or inaccessible
31 location, an underground facility operator shall respond to a request to locate promptly.

New Text Underlined [DELETED TEXT BRACKETED]

1 A response is considered to be prompt if it is made within two working days after the
2 operator receives the request or at a later time so long as the response occurs before
3 the beginning of the excavation. For an underground facility in an accessible remote
4 or unstaffed location, the operator shall respond within 10 working days after the
5 operator receives the request or at a later time so long as the response occurs before
6 the beginning of excavation.
7 (e) After an operator has field marked an underground facility, the excavator
8 is responsible for maintaining the markings.
9 (f) An excavator may not begin to excavate until each underground facility has
10 been field marked.
11 (g) When an operator has field marked an underground facility once at the
12 request of an excavator, the operator has the right to receive compensation from the
13 excavator for costs incurred in responding to subsequent requests to locate the same
14 underground facility during the same excavation project if the excavator failed to
15 maintain the original marking.
16 (h) If an excavator discovers an underground facility that was not field marked
17 or was inaccurately field marked, the excavator shall immediately stop excavating in
18 the vicinity of the facility and shall notify the operator of the discovery. The
19 excavator may notify the operator by means of a notification center. The operator
20 shall treat the notification as a request to locate in an emergency and shall respond
21 accordingly. An excavator may not be held liable for inadvertent damage caused to
22 an unmarked or an inaccurately marked underground facility.
23 (i) Unless the request to locate is made in response to an emergency, an
24 underground facility operator has the right to receive compensation for costs incurred
25 in responding to a request to locate that gives the operator less notice than the
26 minimum notice required by this section. This subsection may not be interpreted to
27 require the operator to respond to the request to locate within the time requested in the
28 notice.
29 **Sec. 42.30.420. Responsibility of construction project owners.** The owner
30 of a construction project that will require excavation shall indicate in bid documents
31 or contracts for construction the existence of underground facilities that the project

1 owner knows are located inside of the proposed area of excavation. This requirement
2 does not release the excavator from the excavator's responsibility under AS 42.30.400
3 - 42.30.490.
4 **Sec. 42.30.430. Obligations concerning the conduct of excavations; liability.**
5 (a) An excavator shall use reasonable care to avoid damaging an underground facility.
6 The excavator shall
7 (1) determine, without damage to the facility, the precise location of
8 an underground facility whose location has been marked;
9 (2) plan the excavation to avoid damage to and minimize interference
10 with an underground facility in or near the excavation area; and
11 (3) to the extent necessary to protect a facility from damage, provide
12 support for an underground facility in and near the construction area during the
13 excavation.
14 (b) If an underground facility is damaged by failure to fulfill an obligation
15 under AS 42.30.400 - 42.30.490, the party failing to perform the obligation is liable
16 to the other party for damages resulting from the failure to perform. Damages may
17 include
18 (1) costs incurred by an excavator if an operator has not field marked
19 or has inaccurately field marked an underground facility; and
20 (2) the normal overhead charges that can be allocated to having to
21 respond to the party's failure to perform.
22 (c) An excavator who, in the course of excavation, contacts or damages an
23 underground facility shall notify the operator. If the damage causes an emergency, the
24 excavator shall also alert appropriate local public safety agencies and take reasonable
25 steps to ensure public safety. A damaged underground facility may not be reburied
26 until it is repaired or relocated to the satisfaction of the operator. The operator of an
27 underground facility that was damaged during excavation shall arrange for repair or
28 relocation of the facility as soon as practical.
29 **Sec. 42.30.440. Penalties; civil actions.** (a) A person who violates a
30 provision of AS 42.30.400 - 42.30.490 is subject to a civil penalty of not less than $50
31 nor more than $1,000 for each offense if the violation results in or significantly

1 contributes to damage to an underground facility.

2 (b) If the court finds that an excavator is violating or threatening to violate a
3 provision of AS 42.30.400 - 42.30.490 and the violation may result in damage to an
4 underground facility, the court may grant injunctive relief to the underground facility
5 operator.

6 (c) An excavator is liable to the operator of an underground facility for three
7 times the operator's cost in repairing and relocating the facility if the excavator

8 (1) intentionally damages a field marked underground facility; or

9 (2) knows of an underground facility that is near a planned excavation
10 and the excavator fails to notify the underground facility operator as required by
11 AS 42.30.400; notification under this paragraph may be made directly to the operator
12 or, if appropriate, through a notification center.

13 **Sec. 42.30.450. Waiver of requirements by written agreement.** An operator
14 and an excavator may, by written agreement, waive the requirements of AS 42.30.400
15 - 42.30.490 that the excavator notify the operator of planned excavations and that the
16 operator locate underground facilities. The agreement must identify the geographic
17 areas to which the waiver applies and the time period for which the waiver is valid.

18 **Sec. 42.30.460. Underground facility owner.** If the operator of an
19 underground facility is not the owner of the facility and if the operator cannot be
20 identified or has been identified but cannot be reached in a reasonable amount of time,
21 the excavator may give the notice required by AS 42.30.400 - 42.30.490 to the owner
22 of the underground facility and the owner shall assume the duties and responsibilities
23 of the operator under AS 42.30.400 - 42.30.490.

24 **Sec. 42.30.490. Definitions.** In AS 42.30.400 - 42.30.490,

25 (1) "damage" means

26 (A) the substantial weakening of structural or lateral support of
27 an underground facility;

28 (B) penetration, impairment, or destruction of any underground
29 protective coating, housing, or other protective device; and

30 (C) the partial or complete severance of an underground facility
31 to the extent that the project owner or facility operator determines that repairs

1 are required;
2 (2) "emergency" means
3 (A) a condition that constitutes a clear and present danger to
4 life, health, or property; or
5 (B) an unplanned service interruption;
6 (3) "excavation" means
7 (A) an activity in which earth, rock, or other material on or
8 below the ground is moved or otherwise displaced by any means;
9 (B) road maintenance that changes the original road grade;
10 (C) demolition or movement of earth by equipment, tools, or
11 explosive device except tilling of the soil less than 12 inches in depth for
12 agricultural purposes;
13 (4) "excavator" means a person who conducts excavation in the state;
14 (5) "inaccessible" means impossible or unreasonably difficult to reach
15 due to conditions beyond the control of the underground facility operator;
16 (6) "intentionally" has the meaning given in AS 11.81.900(a);
17 (7) "notification center" or "center" means a service through which a
18 person is able to call one number to notify member operators of underground facilities
19 that an excavation is proposed and to request the operators to mark facilities located
20 inside of the proposed excavation area;
21 (8) "operator" means a person who supplies a service for commercial
22 or public use by means of an underground facility;
23 (9) "person" means any individual, public or private corporation,
24 political subdivision, government agency, municipality, industry, partnership,
25 copartnership, association, firm, trust, estate, or any other entity whatsoever;
26 (10) "remote" means not accessible by road;
27 (11) "underground facility" means a pipe, sewer, conduit, cable, valve,
28 line, or wire, including attachments and those parts of poles or anchors that are below
29 ground, for use in connection with the storage or conveyance of water, sewage,
30 telecommunications, cable television, electricity, petroleum, petroleum products,
31 hazardous liquids, or flammable, toxic, or corrosive gas;

1 (12) "unstaffed" means not normally staffed with employees;

2 (13) "working day" means a day on which an underground facility

3 operator is open for regular business.

Amendment #1

AMENDMENT

TO CSSB 330(L&C) BY ___________

Page 2, line 11 following "least":

DELETE "three years",

and

INSERT "one year"

Amendment #2

AMENDMENT

TO CSSB 330(L&C) BY ___________

Page 3, line 421 following "accordingly.":

ADD: "An excavator shall not be liable for inadvertent damage caused to an inaccurately field marked underground facility."

Amendment #3

AMENDMENT

TO CSSB 330(L&C) BY ___________

Page 5, line 4 following "(1)":

DELETE "knowingly or"

Page 6, line 14:

DELETE "(7)" and renumber

Amendment #4

AMENDMENT

TO CSSB 330(L&C) BY ___________

Page 6, line 31:

DELETE "(14)" and renumber

CHUGACH ELECTRIC
ASSOCIATION, INC.

EUGENE N. BJORNSTAD, P.E.
General Manager

March 30, 1998

Senator Rick Halford
Senate Resources Committee
Room 121
State Capitol
Juneau, Alaska 99801-1182

FAX

Dear Senator Halford:

Thank you for the opportunity to comment on SB 330. Chugach Electric supports this bill because it addresses an issue which is critical to the reliability of electric service.

We have the following suggested additions to the bill which are consistent with the intent of the bill.

I. Charges for locate services. Add the following as a new subsection 410 (j)

> (j) For public utilities whose rates are regulated by the Alaska Public Utilities Commission, repayment of cost of locate services shall continue to be established by tariff by the commission under authority granted pursuant to A.S.42.05.141.

Purpose of this proposed change. This change allows the bill to retain its focus on obligations and strong incentives to make efforts to obtain the locate services. The proposed change allows cost recovery for locate services to remain in the tariff of each regulated utility rather than trying to deal with it by legislation.

II. Definition of "repair." Add to the proposed A.S.42.30.430 (b) so that it reads as follows:

> (b) If an underground facility is damaged by failure to fulfill an obligation under A.S.42.30.400 - 42.30.490, the party failing to perform the obligation is liable to the other party for damages resulting from the failure to perform. Damages <u>shall</u> [may] include <u>but are not limited to</u>

5601 Minnesota Drive • P.O. Box 196300 • Anchorage, Alaska 99519-6300
Phone 907-563-7494 • FAX 907-562-0027

1. The lesser of:
A. The cost of restoring the operator's facility to a condition of no less service life, integrity or reliability than that which existed prior to the damage, including, if necessary, replacement of the facility between the logical junction points on the system, or

B. Three times the cost of a full repair not including the replacement of the entire span between junction points; and

2. the normal overhead charges that can be allocated to having to respond to the party's failure to perform.

Purpose of this proposed change. This change addresses a problem which we have had with entities which have destroyed underground cable. This language would establish the measure of damages in a way which reflects the true damage to the system. It is critically important that the measure of damage reflect the degradation to the reliability of the system which occurs when splices are inserted where none would normally be needed. Splices are a significant source of cable failures. In the harsh frozen ground environment, underground cable failures are a very serious problem. It is essential that there be strong incentives not to create unneeded splices and when they are caused that the entity which causes the damage be assessed costs which reflect degradation of reliability to the electric facilities.

III. Definition of "operator." Revise the definition of "operator" so that it reads:

"Cperator" means a person who owns, manages, or controls any underground facility used to furnish a service or commodity for commercial or public use.

Purpose of this proposed change. This is necessary to prevent the possibility that an excavator might be deemed to have given adequate notice to the operator by simply giving notice to an entity such as a power marketer which arguably "supplies a service" but which does not own, control or manage any facilities at all. This revised definition fits with the definition of a public utility already in A.S. 42.05.990

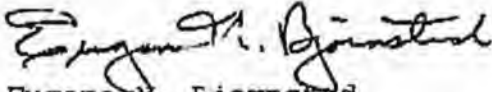
IV. Exposure of energized cables. Add the following subsection (d) to the proposed A.S. 42.30.430.

(d) Where an excavator exposes an energized cable, regardless of whether it has been damaged, the excavator shall arrange and pay for the cost of a qualified person to remain at the

site until such time as the facility is reburied at least to a depth required by applicable Federal, State or Municipal codes or until such time as the facility has been de-energized by the operator.

Purpose of this proposed change. This is necessary because most people do not realize that, unlike normal household appliances, exposed underground cables are potentially dangerous even if they appear to be well insulated and undamaged. Unqualified personnel, and in particular children, need to be absolutely prevented from gaining access to the cables anytime they are exposed and energized.

Sincerely,



Eugene N. Bjornstad
General Manager

MAR-12-98 THU 02:08 PM AK PUB UTIL COMM FAX NO. 907 276 0160 P. 01

STATE OF ALASKA

TONY KNOWLES, GOVERNOR

1016 WEST SIXTH AVENUE, SUITE 400
ANCHORAGE, ALASKA 99501-1963
PHONE: (907) 276-6222
FAX: (907) 276-0160
TTY: (907) 276-4533

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

ALASKA PUBLIC UTILITIES COMMISSION

March 12, 1998

Honorable Loren Leman
Chairman
Senate Labor & Commerce Committee

Via fax 465-3810

Ref: SB 330

Dear Senator Leman:

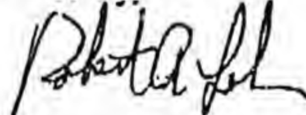
Thank you for asking the view of the Alaska Public Utilities Commission on SB 330 concerning underground locate standards. I have reviewed the bill and see no direct impact on the Commission. It does not mention the APUC. The bill adds a new section to AS 42.30, but as drafted the Department of Law advises us that the Commission lacks authority to enforce provisions in this chapter.

The Commission has not addressed the bill, except to estimate its fiscal impact as zero. It is not the case that the issue of underground locates is a low-priority item for the Commission. Rather, this bill focuses on the conduct of excavators, who lie beyond the scope of APUC authority over public utilities.

The Commission's responsibility to ensure safe, adequate and reliable utility service at just and reasonable rates would be enhanced by a system that encourages excavators to obtain reliable information concerning the location of underground facilities before they dig and penalizing them if they fail to do so.

Please let me know if you have any questions. Again, thanks for the opportunity to comment.

Sincerely,



Robert A. Lohr
Executive Director

LOCATE CALL CENTER OF ALASKA, INC.

2221 E. Northern Lights Blvd. Suite 136
Anchorage, Alaska 99508
(907) 279-1122 FAX (907) 270-0696

February 6, 1996

James Rowe
Executive Director
Alaska Telephone Association
4341 B Street, Suite 304
Anchorage, Alaska 99503

Dear Mr. Rowe:

Thank you for sending me the draft of the proposed underground utilities legislation.

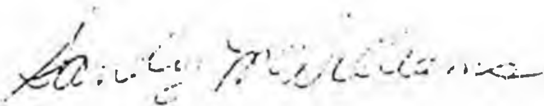
I am familiar with the Washington legislation and know it has been well received by the underground utility community in that state.

From a "one-call" standpoint, the only suggestion I have is to change the reference to a "one-number locator service" (on pages 3, 5, and 6) to a "one-number locate notification service." The Alaska one-call center (as with all other centers of this type) receive locate information and transmit this information to other entities who actually perform the locate. By calling this a "locator service" there may be some misunderstanding as to who is actually doing the locate.

The Anchorage Area Utility Association has discussed pursuing this type of legislation for years. Your organization is to be congratulated for taking the steps to move forward.

Please call me if I can be of further assistance.

Sincerely,



Sandy McWilliams
President