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March 29, 2007

Lawrence L. Hartig
Commissioner
Department of Environmental Conservation
State of Alaska
410 Willoughby Ave., Ste. 303
P.O. Box 111800
Juneau, Alaska 99801

and by fax to: (907) 465-5070

Dear Commissioner Hartig:

Please allow this letter to serve as a petition requesting the Alaska Department of Environmental Conservation (ADEC) to initiate a rule-making that would require emitters of significant amounts of greenhouse gas emissions in Alaska to quantify and report those emissions and fuel usage to your department.

The petitioners (see list at the end of this letter) are concerned about the protection of the human and natural environment in Alaska and maintaining a sustainable economy for Alaska. Global warming caused by greenhouse gas emissions from the burning of fossil fuels has already caused damage to Alaska's environment, especially evident in many coastal villages suffering erosion problems. Over time it will cause serious damage to Alaska's economy, most particularly to the subsistence hunting and fishing component that sustains thousands of Alaskan families. Global warming impacts will remain a serious threat to Alaska, to the worldwide environment, and to our economy unless government acts immediately to require reductions in greenhouse gas emissions. To begin that effort, all major sources of emissions in Alaska must be identified and their emissions must be quantified.

This rule-making petition is filed under Alaska Statute (AS) 44.62.220, which allows any interested person or group to petition an agency for the adoption or repeal of a regulation. Under AS 44.62.230, within thirty days after receipt of the petition ADEC must either deny the petition in writing or schedule the matter for a public hearing under AS 44.62.190 - 44.62.215. In this instance, should ADEC need additional time to

consider the petition, under appropriate circumstances the petitioners would be willing to waive the thirty day deadline.

GLOBAL WARMING BACKGROUND

Since the beginning of the industrial revolution, atmospheric concentrations of carbon dioxide, methane, and nitrous oxide concentrations have risen to such a level that there no longer is any reasonable scientific doubt about their impact on climate. According to postings on the U.S. Environmental Protection Agency climate change website,

Scientists know with virtual certainty [a greater than 99% chance that a result is true] that:

- Human activities are changing the composition of Earth's atmosphere. Increasing levels of greenhouse gases like carbon dioxide (CO₂) in the atmosphere since pre-industrial times are well-documented and understood.
- The atmospheric buildup of CO₂ and other greenhouse gases is largely the result of human activities such as the burning of fossil fuels.
- A warming trend of about 0.7 to 1.5°F occurred during the 20th century. Warming occurred in both the Northern and Southern Hemispheres, and over the oceans ...
- The major greenhouse gases emitted by human activities remain in the atmosphere for periods ranging from decades to centuries. It is therefore virtually certain that atmospheric concentrations of greenhouse gases will continue to rise over the next few decades.
- Increasing greenhouse gas concentrations tend to warm the planet.¹

Today there is a scientific consensus with a "very high confidence" level that increases in greenhouse gas emissions --- primarily carbon dioxide, methane, and nitrous oxide --- from human sources have enhanced the heat-trapping capability of the earth's atmosphere raising the surface temperature of the earth.²

The evidence that the atmosphere warmed significantly in the last century is overwhelming. In its *Third Assessment Report: The Scientific Basis*, the Intergovernmental Panel on Climate Change (IPCC) found that the Earth has warmed significantly in the last century; the increase in temperature in the 20th century is likely

¹ EPA, Climate Change - Science, <http://epa.gov/climatechange/science/stateofknowledge.html#cite1> (last visited Feb. 12, 2007).

² International Panel on Climate Change (IPCC), *Climate Change 2007: The Physical Science Basis*, Summary for Policymakers Contribution of Working Group I to the Fourth Assessment Report, at 5 (footnote omitted) ("very high confidence that the globally averaged net effect of human activities since 1750 has been one of warming"), and at 10 (italics in original; footnote omitted) ("Most of the observed increase in globally averaged temperatures since the mid-20th century is *very likely* [> 90%] due to the observed increase in anthropogenic greenhouse gas concentrations") (February 2007).

the largest of any century in the past 1,000 years.³ 2005 was the warmest year in the last century.⁴ According to Environment Canada, 2006 was the 28th consecutive year with above-normal temperatures and the sixth warmest year on record.⁵ After stating that the "[w]arming of the climate system is unequivocal, as is now evident from observations of increases in global average air and ocean temperatures, widespread melting of snow and ice, and rising global average sea level," the IPCC recently pointed out that "Eleven of the last twelve years (1995 - 2006) rank among the 12 warmest years in the instrumental record of global surface temperature [the average of near surface air temperature over land, and sea surface temperature] (since 1850)."⁶ On March 15, 2007, the U.S. National Oceanic and Atmospheric Administration announced that the "global average temperature was the warmest on record for the December [2006] - February [2007] period."⁷ Britain's Meteorological Office recently said that there was a 60 percent probability that 2007 would break the record set by 1998, which was 1.20 degrees over the long-term average temperature, making 2007 the world's hottest year on record.⁸

The existence of the effects from global warming in the 20th-century is substantiated by melting glaciers, a decrease in snow cover over the Northern Hemisphere and floating ice in arctic regions, increases in sea level over the past century, a worldwide increase in precipitation, and even warming below ground.⁹ New studies led by the National Center for Atmospheric Research project that the Arctic Ocean could be mostly open water in summer by 2040 --- several decades earlier than previously expected --- partly as a result of global warming caused by greenhouse gas emissions.¹⁰

³ IPCC, *Third Assessment Report: The Scientific Basis*, Contribution of Working Group I, Summary for Policymakers, at 2, J.T. Houghton, *et al.*, eds., Cambridge Univ. Press (2001). This IPCC report contains (i) up-to-date descriptions of the climate system and related factors, (ii) based on the knowledge of the international expert communities, (iii) produced by an open and peer-reviewed professional process, and (iv) based upon scientific publications whose findings are summarized in terms useful to decision makers. *Id.*, Technical Summary, at 2.

⁴ James Hansen, *et al.*, *Global Temperature Trends: 2005 Summation*, National Aeronautics and Space Agency (2005), available at <http://data.giss.nasa.gov/gistemp/2005/>.

⁵ http://www.msc.ec.gc.ca/media/top10/2006/runnerup2006_e.html (last visited Jan. 4, 2007) ("The ten warmest years globally have all occurred since 1990, the top three since 1998. According to the World Meteorological Organization in Geneva, the global average temperature has risen about three times faster since 1976 compared to that for the past 100 years. Now into the 21st century, global temperatures are more than 0.7°C above those at the beginning of the 20th century. Although yet another warm year is not itself evidence of enhanced climate change, the unprecedented increase in global temperatures in the past quarter century has added to the strong and compelling evidence of humankind's contribution to our changing climate.").

⁶ IPCC, *Climate Change 2007: The Physical Science Basis*, Summary for Policymakers Contribution of Working Group I to the Fourth Assessment Report, at 5 (February 2007).

⁷ U.S. NOAA, *NOAA Says U.S. Winter Temperature Near Average - Global December-February Temperature Warmest on Record*, available at <http://www.noaanews.noaa.gov/stories2007/s2819.htm> (last visited Mar. 16, 2007).

⁸ Raphael G. Satter, *Scientists Say 2007 May Be Warmest Yet*, Associated Press, Jan. 4, 2007, available at <http://www.enn.com/today.html?id=11969> (last visited Jan. 3, 2007).

⁹ *Id.*

¹⁰ Andrew C. Revkin, *Arctic Ice Melting Faster Than Expected*, N.Y. Times, December 11, 2006. See also Environment Canada at http://www.msc.ec.gc.ca/media/top10/2006/runnerup2006_e.html (last visited Jan. 4, 2007) ("In each of the last five years, the Arctic sea-ice cover has dipped sharply to the smallest area dimension since it was first measured by satellites in 1978. The average sea-ice extent at the end of

Just a few weeks ago the rapidly depleting sea ice in the Arctic Ocean caused by global warming prompted the U.S. Department of the Interior, U.S. Fish & Wildlife Service to propose the listing of the icon of the Alaska and polar arctic --- the polar bear --- as threatened under the federal Endangered Species Act.¹¹

Although many uncertainties in climate science remain, few in the scientific community doubt that the potential impacts from human-induced climate change pose a substantial risk to the human and natural environment. The Board of Directors of the American Association for the Advancement of Science recently stated that "[t]he scientific evidence is clear: global climate change caused by human activities is occurring now, and it is a growing threat to society.... . The time to control greenhouse gas emissions is now."¹² Scientists predict with a ninety percent probability that the average global surface temperature will rise between 1.7 and 4.9 degrees Celsius by 2100 if nothing is done to prevent this from happening.¹³ Human health, agriculture, water resources, forests, wildlife and coastal areas are vulnerable to even slight changes in global temperature, so realization of the larger end of this estimate would be catastrophic worldwide.¹⁴

While the arctic is warming at twice the rate of the rest of the world, Alaska's arctic region is feeling the effects of global warming at a rate four times that of the rest of the world.¹⁵ This is particularly evident in Alaska's coastal areas where, as recently reported in a series of stories by the Alaska Daily News and elsewhere,¹⁶ shoreline erosion traceable to global warming is damaging villages and eventually will require their abandonment. Because of these damaging impacts, it is not an overstatement to claim

September 2006, when ice usually reaches its smallest extent, was 5.9 million square kilometres, the second lowest on record missing the 2005 record by 340,000 square kilometres. Including 2006, the September rate of sea ice decline is now about -8.6 per cent per decade. Scientists suggest that the summer ice cover has reached a "tipping point" beyond which there is no return and will likely continue to decrease until the ice disappears sometime in the 21st century, marking the first time in a million years the Arctic Ocean is ice-free.").

¹¹ See http://www.fws.gov/Endangered/12mo_finding_polar_bear.pdf (last visited Jan. 4, 2007) (proposed rule, discussing sea ice changes due to warming temperatures at pp. 31 - 37).

¹² AAAS 2007 Annual Meeting News Blog, "AAAS Board Releases New Statement on Climate Change," Feb. 18, 2007, available at http://news.aaas.org/index.php/news/am_board_statement/id=185 (last visited Feb. 26, 2007).

¹³ Thomas R. Karl & Kevin E. Trenberth, *Modern Global Climate Change*, 302 *Science* 1721 (2003).

¹⁴ EPA, Global Warming, <http://yosemite.epa.gov/oar/globalwarming.nsf/content/climate.html>. See also United Kingdom, HM Treasury, *The Economics of Climate Change - The Stern Review* (Cambridge University Press, 2007), also available at http://search.treasury.gov.uk/search?p=Q&ts=treasury&mainresult=mt_mainresult_yes&w=stern (last visited Feb. 12, 2007) (the Summary of Conclusions stating that "the overall costs and risks of climate change will be equivalent of losing at least 5% of global GDP each year, now and forever ... the estimates of damage could rise to 20% of GDP or more").

¹⁵ National Assessment Synthesis Team (2001) *Climate Change Impacts on the United States: The Potential Consequence of Climate Variability and Change*. Cambridge University Press. IFBN 0-521-0075-0.

¹⁶ See, e.g., Rachel D'Oro, *In Many Villages, Alaskans Face Physical and Cultural Erosion*, Associated Press, Dec. 26, 2006 ("Erosion and flooding affect 86 percent -- or 184 -- of 213 Alaska native villages to some degree, according to a 2003 report by the U.S. Government Accountability Office") available at <http://www.enn.com/today.html?id=11915> (last visited Jan. 4, 2007).

that at stake in the fight against global warming is the survival of Alaska Native cultures.¹⁷ Recognizing this, at its October 2006 Convention the Alaska Federation of Natives passed Resolution 06-20, which urges the Legislature and Governor to enact both legislation and regulations to reduce greenhouse gas emissions.¹⁸ In the recent legislative Session, the Legislature passed HCR 30, creating the Climate Change Impact Assessment Commission; the Resolution acknowledges the severe impacts that unchecked global warming will have in Alaska, particularly in rural areas.¹⁹

In addition, the Alaska Municipal League, representing 140 local governments, unanimously passed a "Policy on Global Climate Change" at its recent annual meeting. This Policy states that "[t]he threat of global climate change is real and is accelerating at an alarming rate." It calls for Congress to enact legislation establishing a mandatory, market-based approach to limiting greenhouse gas emissions. Also, the Fairbanks North Star Borough Assembly recently passed a Resolution (2006-39, 10/12/06) acknowledging that global warming was reducing the quality of life for Borough residents and "negatively impacting Interior Alaska as a visitor destination" and "costing million of dollars for repair and lowering the value of the tax base for municipalities." The Resolution "urges the Alaska Legislature and the United States Congress to move forward on programs to cap or reduce greenhouse gas emissions and to take other mitigation, research, and adaptation steps.

Just as in the general public, in the oil industry --- the industry with the greatest financial impact on State government --- the debate about global warming is largely over. For example, in 1997 British Petroleum was widely acknowledged for publicly advocating precautionary action and in 1998 it set voluntary targets to reduce its own greenhouse gas emissions. On November 25, 2006, the Washington Post reported statements made by the President of Shell Oil Company that "[f]rom Shell's point of view, the debate is over. When 98 percent of scientists agree, who is Shell to say, 'Let's debate the science'? " Anadarko Petroleum has stated that it has begun voluntarily reducing greenhouse gas emissions in response to the threat of global warming.²⁰ ConocoPhillips has recognized that

human activity, including the burning of fossil fuels, is contributing to increased concentrations of greenhouse gases in the atmosphere that can lead to adverse changes in global climate. While the debate continues over the extent of human contributions and the timing and magnitude of future impacts, we are committed

¹⁷ Arctic Climate Impact Assessment, *Impacts of a Warming Arctic* (2004).

¹⁸ Available at http://www.nativefederation.org/documents/2006AFNConventionResolutions_000.pdf, (last visited Nov. 8, 2006).

¹⁹ Available at http://www.legis.state.ak.us/basis/get_bill_text.asp?hsid=HCR030E&session=24 (last visited Nov. 10, 2006).

²⁰ See Anadarko website, http://www.anadarko.com/community_environment/climate_change.asp (last visited Dec. 11, 2006).

to taking action to expand our business planning processes to address greenhouse gas emissions and to develop greenhouse gas targets for our operations.²¹

ExxonMobil has stated:

Recognizing the risk of climate change, we are taking actions to improve efficiency and reduce greenhouse gas emissions in our operations... . Global examples of ExxonMobil's actions to manage and reduce GHG emissions include: Reporting of GHG emissions²²

Just this January, Exxon Mobil announced "We are supporting efforts with other companies and organizations to develop common and accepted industry standards for measuring carbon emissions. We voluntarily report our emissions and back mandatory reporting based on effective, reliable procedures."²³ Among the major players in Alaska's mining industry, Teck Cominco already publicly reports some of its greenhouse gas emissions on its website.²⁴

At the same time that many organized sectors of Alaska society have concluded that global climate change poses a significant threat to the Alaska and global environment, the electorate has reached the same conclusion. Voters have been sending a "take action now" message to candidates for office. According to Zogby International, "a solid majority (58%) of voters [in the last election] agreed their elected officials "should make combating global warming a high priority" and "half of Americans who voted in the mid-term elections said concern about global warming made a difference in who they voted for."²⁵

Senator Ted Stevens, after noting that the transportation sector caused more than one-third of the nation's greenhouse gas emissions, recently introduced legislation to raise passenger automobile fuel economy standards and stated in part that

[g]lobal climate change is a very serious problem. As far as the United States is concerned, evidence of global climate change is more apparent in Alaska than

²¹ See ConocoPhillips website, <http://www.conocophillips.com/about/Sustainable+Development/Climate+Change+Position+Statement/ind ex.htm> (last visited Dec. 11, 2006).

²² See ExxonMobil website at http://www.exxonmobil.com/Corporate/Citizenship/CCR5/greenhouse_gas_emissions.asp and http://www.exxonmobil.com/Corporate/Citizenship/CCR5/ghg_emissions_reporting.asp (last visited Dec. 14, 2006).

²³ Exxon Mobil press statement on *Climate Change* available at http://www.exxonmobil.com/UK-English/Newsroom/UK_NR_VP_Viewpoint_Environment.asp (last visited Jan. 4, 2007).

²⁴ See <http://www.teckcominco.com/sustainability/environment/ghg.htm> (last visited Dec. 15, 2006).

²⁵ Press Release, Zogby International, *Zogby Post-Election Poll: Dems Gained From Global Warming Debate* (Nov. 16, 2006), available at <http://www.zogby.com/search/ReadNews.dbm?ID=1194> (last visited Dec. 11, 2006).

anywhere else. The Arctic sea ice is receding, the trees are growing farther north, and the permafrost is thawing.²⁶

REASONS TO ADOPT A REPORTING RULE

No one seriously questions the proposition that the solution to the global warming problem requires governmental action. Since Alaska already is experiencing the most severe effects from global warming within the United States, our State government should take a leadership role in addressing the problem. It should ask Alaskans to do their part to reduce the emissions of greenhouse gases.

In that regard, a necessary first step for State government to take is to require those responsible for operations that cause significant amounts of greenhouse gases emissions in Alaska to report their emissions and fuel usage to the public. The information yielded by a mandatory reporting program would provide policy-makers the foundation on which to develop a comprehensive climate change strategy for reducing greenhouse gas emissions in a way that is efficient, market-oriented, and best protects Alaska's environment, industries and economy. Ultimately emission reduction targets will have to be set, and compliance with those targets must be assessed and enforced. Indeed, President Bush acknowledged this nearly five years ago, stating that "I reaffirm America's commitment to the United Nation's Framework Convention and it's central goal, to stabilize atmospheric greenhouse gas concentrations at a level that will prevent dangerous human interference with the climate. Our immediate goal is to reduce America's greenhouse gas emissions relative to the size of the economy."²⁷

While petitioners, most experts, and most other nations believe President Bush's targets are set too low, to reach even these targets will require a knowledge base that the nation currently does not have. Government and industry must know the size and growth rates of emissions and their sources in order to design and then evaluate public policies and private strategies to reduce emissions.²⁸ The public also has a right to know about the sources of greenhouse gas emissions so individuals and businesses can make more informed and socially responsible purchasing and consumption decisions.

Thus, mandatory measurement of public reporting of greenhouse gas emissions and fuel usage is a basic, essential element of any effective plan to stabilize the growth of those emissions and then reduce them. The public reporting of this data will help ensure that emitters take public responsibility for their contributions to climate change.²⁹ Furthermore, reporting is a powerful tool for fostering public awareness about

²⁶ Press Release, U.S. Senate Committee on Commerce, Science, & Transportation, *Statement by Senator Stevens on Climate Change Research Integrity* (Feb. 8, 2007) available at <http://commerce.senate.gov/public/index.cfm?FuseAction=PressReleases> (last visited Feb. 12, 2007).

²⁷ President George W. Bush, Address, Feb. 14, 2002, excerpts available at <http://www.fws.gov/home/feature/2006/PolarbearFAQ.pdf> (last visited Jan. 4, 2007).

²⁸ Climate Action Network Canada Recommendations for Mandatory Reporting of Greenhouse Gases (2003), available at <http://www.climateactionnetwork.ca/e/resources/publications/can/ghg-reporting.pdf>

²⁹ *Id.*

environmental problems and allowing industries to identify and implement cost-saving measures that will improve the environment.³⁰

Other western states have already taken action to require the reporting and inventorying of greenhouse gas emission data. For example, the California Assembly recently passed legislation mandating that the California State Air Resources Board adopt regulations to require such reporting.³¹ The Governor of Arizona has issued an Executive Order directing the Arizona Department of Environmental Quality to develop a reporting mechanism and directing it to work with other western states to establish a registry.³² Thirty one northeastern and Midwestern states announced this month that they are working to develop, under the leadership of the Northeast States for Coordinated Air Use Management (NESCAUM) and the California Climate Action Registry, a uniform multi-state registry.³³ Similarly, Congress has pending before it H.R. 955, a bill that would require the Environmental Protection Agency to adopt reporting regulations and to set up a nationwide inventory for greenhouse gas emissions.³⁴

Petitioners propose a mandatory reporting rule because voluntary reporting programs tried to date have not been successful. An example is the Voluntary Reporting of Greenhouse Gases Program managed by the U.S. Department of Energy under section 1605(b) of the Energy Policy Act of 1992.³⁵ The program records the results of voluntary measures to reduce, avoid, or sequester carbon. In 2004, however, only 226 U.S. companies and other organizations reported to the program that they had undertaken projects to reduce or sequester greenhouse gases.³⁶ This actually represented a decrease in the number of reports received in 2003.³⁷ Moreover, the companies that filed reports with the Department of Energy represent a small fraction of the thousands of companies that, together, generate most of the greenhouse gas emissions in the United States. Similarly, the lack of industry-wide participation in the voluntary California Climate Action Registry led the California Climate Action Team to recommend that the

³⁰ *Id.*

³¹ 2006 California Laws Chapter 488 (Assembly Bill 32), available at http://www.leginfo.ca.gov/pub/bill/asm/ab_0001-0050/ab_32_bill_20060927_chaptered.html (last visited Nov. 8, 2006). Connecticut also has adopted mandatory reporting legislation. Conn. Gen. Stat. Ann. § 22a-200b. So also has Maine. See <http://www.maine.gov/dep/air/emissions/ghg-rptng.ht> (last visited Mar. 27, 2007).

³² Available at <http://www.azlibrary.gov/is/state/eo/2006-13.pdf> (last visited Nov. 7, 2006).

³³ Bernie Woodall, *Effort afoot to start U.S. climate registry*, Reuters News Service, Mar. 21, 2007. NESCAUM is an association of eight northeastern states. See the NESCAUM website at <http://www.nescaum.org/>. A listing of some of the accounting and other reporting programs already operational or under development is available at the NESCAUM-associated Eastern Climate Registry website, <http://www.easternclimateregistry.org/registriesother.html> (last visited Mar. 16, 2007).

³⁴ Available at <http://thomas.loc.gov/cgi-bin/query/z?c109:H.R.955> (last visited Nov. 7, 2006).

³⁵ U.S. Department of Energy, National Inventory and Voluntary Reporting of Greenhouse Gases, available at <http://www.eia.doe.gov/oiaf/1605/policy.html>

³⁶ U.S. Department of Energy, Voluntary Reporting of Greenhouse Gases 2004, available at [http://www.eia.doe.gov/oiaf/1605/vrrpt/pdf/0608\(04\).pdf](http://www.eia.doe.gov/oiaf/1605/vrrpt/pdf/0608(04).pdf)

³⁷ *Id.*

California Assembly adopt requirements for mandatory reporting which, as noted above, the Assembly has since enacted.³⁸

An example of a successful mandatory disclosure reporting program is the U.S. Environmental Protection Agency's Toxics Release Inventory (TRI).³⁹ The TRI --- or Toxics Right-to-Know law --- has long been considered an effective model for stimulating voluntary reductions of chemical releases across a large segment of industry.⁴⁰ Under the TRI, mandatory disclosure has prompted action by firms not typically predisposed to voluntary action.⁴¹ The top managers and non-environmental staff of large firms have often learned of their firms' releases of toxics through TRI disclosure. This has led them to reduce the economic waste caused by the unnecessary release of chemicals and thereby increase their profits.⁴² Vendors of pollution prevention technologies have used the TRI to find customers.⁴³ State and local agencies have used the TRI to identify firms in need of technical assistance.⁴⁴ And, finally, facilities have been motivated to reduce emissions (and correspondingly, fossil fuel consumption) by the publicity and market pressures associated with disclosure.⁴⁵ All these mechanisms would likely operate under a mandatory reporting program in Alaska.

A mandatory reporting requirement will also advantage Alaska industries economically. Emissions are usually a sign of operational waste and inefficiency, and knowing what they are and what causes them will spur innovation to reduce fuel usage and emissions, thus saving Alaska companies and the general public economic costs over the long run. On this point, the Fairbanks North Star Borough Assembly Resolution No. 2006-39 remarked:

Possible actions taken to mitigate climate impacts through reduction of greenhouse gas emissions are expected to provide specific economic benefits to our communities through improvement in energy efficiencies for housing, electrical usage, and city transportation and other sectors, public and private⁴⁶

Knowing the current level of emissions also will help establish a company's baseline for compulsory emission reduction programs (such as cap and trade programs)

³⁸ Climate Action Team Report to Governor Schwarzenegger and the Legislature (2006), available at http://www.climatechange.ca.gov/climate_action_team/reports/2006-04-03_FINAL_CAT_REPORT.DOC

³⁹ The TRI is maintained by the U.S. Environmental Protection Agency in accordance with the Superfund Amendments and Reauthorization Act of 1986, section 313 (SARA 313). Under SARA 313, about 23,000 facilities annually report the amount of certain toxic chemicals they release to the environment.

⁴⁰ Pew Climate, Greenhouse Gas Reporting and Disclosure, available at http://www.pewclimate.org/policy_center/policy_reports_and_analysis/brief_ghg_reporting_disclosure/ghg_mandatory.cfm

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ Fairbanks North Star Borough Assembly Resolution No. 2006-39, at 2.

that are inevitably coming in the near future.⁴⁷ Early reporting will help influence governmental policy decisions in the most cost-effective directions. Transparent reporting will address the public's and shareholder concerns about companies' environmental stewardship. Thus, adopting a mandatory reporting requirement now will not only help the environment, it will give Alaska's industries, governments and people the opportunity to adjust their operations earlier and more creatively, with the least amount of fiscal disruption and greatest potential for economic savings and innovation.

ADEC AUTHORITY TO ADOPT A REPORTING RULE

A mandatory reporting rule is consistent with codified policy of the Legislature for the Alaska environment. Many years ago the Legislature stated that is the "policy of the state to conserve, improve and protect its natural resources and environment and control ... air pollution, in order to enhance the health, safety, and welfare of the people of the state and their overall economic and social well-being" and to "manage the basic resources of water, land, and air to the end that the state may fulfill its responsibility as trustee of the environment for the present and future generations."⁴⁸

To effectuate these policies, the Legislature granted ADEC statutory authority to:

adopt regulations necessary to effectuate the purposes of this chapter, including, by way of example and not limitation, regulations providing for

(A) control, prevention, and abatement of air, water, or land or subsurface land pollution ...

(G) other purposes as may be required for the implementation of the policy declared in AS 46.03.010⁴⁹

Thus, ADEC has the authority to --- indeed, should --- adopt regulations requiring the reporting of greenhouse gas emissions.⁵⁰

⁴⁷ Indeed, BP, General Electric, and other major industrial companies have recently formed the United States Climate Action Partnership (USCAP) with leading environmental organizations and called on the federal government to quickly enact strong national legislation to require significant reductions of greenhouse gas emissions. See USCAP's website at <http://www.us-cap.org/index.asp> (last visited Jan. 23, 2007).

⁴⁸ AS 46.03.010(a) - (b).

⁴⁹ AS 46.03.020(10) (A), (G); see also AS 46.03.900(2) (definition of "air pollution"); cf. AS 46.14.990(1) (for the purposes of AS 46.14, defining "air pollutant" to have the same meaning as the definition given in 42 U.S.C. 7602[g]); AS 46.14.990(9) (for the purposes of AS 46.14, defining "emission" to mean a "release of one or more air pollutants to the atmosphere"); AS 44.62.020 (giving ADEC responsibility to "promote and develop programs for the protection and control of the environment of the state").

⁵⁰ Alaska Statute 46.14.180 prohibits ADEC from requiring the monitoring of emissions or ambient air quality *solely* for the purpose of scientific investigation or research. Petitioners do not propose a rule requiring the reporting of greenhouse gas emissions solely for the purpose of scientific investigation or research. Of course, the data reported under the regulation may become useful for scientific investigation

ELEMENTS OF A PROPOSED RULE

In developing a proposed rule, petitioners suggest that ADEC join the efforts of the many states already cooperating in NESCAUM's effort to create a consistent reporting regime. In any event, petitioners request that ADEC adopt a proposed rule that addresses the following elements:⁵¹

1) Definition of greenhouse gas emissions. The regulation should define greenhouse gases to include all of the following gases: carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF₆). These are the gases included within the definition used in the recently enacted California Global Warming Solutions Act of 2006, California Health and Safety Code, § 38505(g).

2) Who should be required to report. As a minimum, all owners and operators who operate under any kind of permit issued under 18 Alaska Administrative Code 50 should be required to report.

ADEC should also consider requiring reporting of emissions by major public and private transportation entities, such as publicly-owned mass transit entities and transportation companies with large fleets. It should also consider imposing the reporting requirement on other categories of emitters that may not be required to have permits under 18 AAC 50 but which may cause emissions above the reporting exemption level described below, such as land fills and natural gas and electrical distribution systems, and coal mines and other ground-disturbing operations that cause the release of methane.

3) What should be reported. Reporters should be required to report the total consumption of fossil fuels used in Alaska and to report all greenhouse gases that are emitted in Alaska or once emitted might be expected to reach Alaska lands and waters, unless the emissions are otherwise exempt from reporting under a *de minimis* exemption (see below).

4) How often should the report be filed. The report should be filed at least annually. For operations responsible for large amounts of emissions, ADEC should consider a more frequent reporting schedule.

5) How should the data be reported. To ensure it is publicly available in a timely manner and reported in a way that is inexpensive to reporters and ADEC, data should be

or research, but the primary purpose of the regulation would be to acquire data as a predicate to further legislative and regulatory action. So envisioned, the proposed rule would avoid any perceived conflict with AS 46.14.180.

It also should be noted that "emission data" are not subject to statutory restrictions concerning the confidentiality of trade secrets. See AS 46.14.520(a). Emissions and monitoring reports filed with ADEC are deemed public records and therefore subject to public inspection and copying. AS 46.14.525.

⁵¹ If ADEC would prefer, petitioners would be willing to draft a proposed rule in the language of the Alaska Administrative Code for ADEC's consideration.

reported electronically through a web-based reporting system. The California Climate Action Registry has developed a standardized web-based reporting application and database mechanism called the Climate Action Registry Reporting Online Tool (CARROT) and it may be adaptable to Alaska.⁵² The CARROT application helps reporters to calculate and report inexpensively, allows the public to review the reports, and allows agency staff to manage and track data efficiently. There may be other equally user-friendly and inexpensive online reporting applications available as well.

6) How should the accuracy of the reported data be guaranteed. The reporting of fossil fuel usage is necessary to help verify the accuracy of emission estimates. Reporters also should be required to certify the accuracy of the data that is submitted to ADEC in the same manner that current an ADEC air quality control permit holder is already required to certify the accuracy of reports filed with ADEC under the permit.

7) What calculation methods should be used. ADEC should prescribe scientifically reliable and acceptable methods that reporters may use for calculating their fuel usage and greenhouse gas emissions.

There are a number of sources for methodologies that are currently in use for estimating greenhouse gas emissions. For example, the California Climate Action Registry has published a *General Reporting Protocol - Reporting Entity-Wide Greenhouse Gas Emissions* Version 2.1 (June 2006) that provides emission factors and other information for the purpose of calculating emissions.⁵³ The World Meteorological Union and United Nations Environment Programme International Panel on Climate Change's *Revised 1996 IPCC Guidelines for National Greenhouse Gas Inventories* contain similar information.⁵⁴ The World Resources Institute also has published *Greenhouse Gas Protocol: The GHG Protocol of Project Accounting* (2005).⁵⁵ Trade associations also have developed methodologies for particular industries.⁵⁶

8) What categories of emissions should be covered in the report: As a minimum, reporters should be required to report all their direct greenhouse gas emissions, and indirect emissions associated with consumption of electricity. Should protocols become available to accurately measure indirect and fugitive emissions, reporting of these kinds of emissions should be considered as well.

"Direct emissions" means those from sources or emission units owned or controlled by the reporting entity. "Indirect emissions" means those that occur because of the actions of a reporting entity but which are produced by sources or emission units

⁵² A number of large companies that do business in Alaska are already members of the California Climate Registry, including BP America, Inc., ConocoPhillips, Shell Oil Company, Chevron USA and affiliates, and Safeway, Inc. See <http://www.climateregistry.org/MEMBERS/> (last visited Jan. 3, 2007).

⁵³ The *General Reporting Protocol* is available for downloading at www.climateregistry.org (last visited Dec. 12, 2006).

⁵⁴ Available at <http://www.ipcc-nggip.iges.or.jp/public/gl/invs1.htm> (last visited Dec. 12, 2006).

⁵⁵ Available at http://www.wri.org/climate/pubs_description.cfm?pid=4039 (last visited Dec. 12, 2006).

⁵⁶ See, e.g., the American Petroleum Institute's *Compendium of Greenhouse Gas Emissions Estimations Methodologies for the Oil and Gas Industry*.

owned or controlled by another entity. "Fugitive emissions" means those unintended or incidental emissions from the production, transmission, processing or transportation of fossil fuels or other materials, such as methane emissions from solid waste landfills and SF₆ from electrical power distributors.

9) What categories of emissions should be exempted from reporting. In the regulation ADEC should prescribe a *de minimis* threshold level of greenhouse gas emissions below which an otherwise covered source would not have to report at all. For sources required to report, the regulation should identify small amounts of emissions that the source would nonetheless not be required to track or report. The purpose of these two exemptions would be to focus the reporting requirement on the major emitters and to relieve the reporting entity from the economic and practical burdens of keeping track of and reporting insignificant amounts of emissions.⁵⁷

10) How the reported data should be published. Whether or not ADEC elects to allow reporting via a publicly available online database like CARROT, the regulation should include the promise that ADEC will maintain an up-to-date, publicly-available online database of all reported emissions. This database should be searchable by month, year, the name of the reporting entity, the kind of greenhouse gas, category of emissions (i.e., direct or indirect), and amount of emissions. ADEC should also promise to issue an annual report to the Legislature containing a summary of the reported information.

Thank you for considering this petition. Please let us know if you need any further information concerning any aspect of it. We look forward to ADEC's response to this important rule-making request.

TRUSTEES FOR ALASKA

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⁵⁷ For examples of reporting exemptions, see the California Climate Registry's *General Reporting Protocol - Reporting Entity-Wide Greenhouse Gas Emissions*, Ch. 5 at 26 - 26.

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