ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION

18 AAC 50 AIR QUALITY CONTROL

Response to Comments on February 9, 2022, Proposed Fees Regulations

April 22, 2022

DEPARTMENT OF ENVIRONMENTAL CONSERVATION

2022 AIR QUALITY FEE REGULATIONS PACKAGE

RESPONSE TO COMMENTS

Prepared by Air Quality Staff on April 22, 2022

Public Comment Closing Date: March 25, 2022 @ 23:59 AkST

Introduction

This document provides the Alaska Department of Environmental Conservation's (Department's or DEC) response to all public comments on its Air Quality Fee Regulations Package of draft regulations to revise air quality permit administration and compliance fees, air quality emission fees, and to clarify language for consistency. The Department provided an opportunity for public comment on its preliminary decision beginning February 9, 2022, and ending March 25, 2022.

Opportunities for Public Comment

The public notice dated February 9, 2022, provided information on the opportunities for the public to submit comments. The deadline to submit comments was March 25, 2022, at 11:59 p.m. This provided a 44 day period for the public to review the proposal and submit comments.

Opportunities to submit written comments included submitting electronic comments using DEC's electronic SmartComment system, submitting electronic comments via email, submitting written comments via facsimile, and submitting written comments via email.

The Department's public notice stated that DEC would hold a public hearing on March 15, 2022, if the Department received a request to hold the hearing by March 8, 2022. The Department received no requests and cancelled the hearing. The Department posted notice of the cancellation on the State, Department, and Division of Air Quality public notice web pages on March 9, 2022, as stated in the public notice.

DEC received comments via SmartComment and e-mail from the following:

- Leonna Wilkins
- Jamie Westerfield
- Kolby Cuthrell
- Alaska Power and Telephone (AP&T)
- Peter Pan Seafood Company LLC (Peter Pan)
- Nushagak Electric Cooperative, Inc. (Nushagak)
- Trident Seafoods Corporation (Trident)
- Alaska Oil and Gas Association (AOGA)

The following public comments received by the Department appear here verbatim unless otherwise noted. The Department may group generally similar comments or answer groups of comments together, if more expedient. The Department may also split long or large comments into pieces to enhance the flow of comment-response in order to ensure that all issues are properly addressed.

Note: The background document for this fee study rulemaking is the March 27, 2018, Updated Guidance on EPA Review of Fee Schedules for Operating Permit Programs Under Title V, from Peter Tsirigotis, Director, hereafter referred to as "the Guidance" or "the 2018 Guidance memo". Also, for expediency, the Department may be referred to as "the agency" where suited by the context.

General Comments (*Comments Verbatim*) (*Response is grouped*)

1. **Commenter Name: Leonna Wilkins**
   Date Submitted: 21 February, 2022

Comment: This regulation is indeed necessary in order to better serve the area. Air quality is a very important aspect to everyday living, so administering permitting and fee changes every 4 years is necessary. If businesses were to over-pollute the air it could alter the environment and living conditions, which then they should be held liable.

2. **Commenter Name: Jaime Westerfield**
   Date Submitted: 21 February, 2022

Comment: This regulation is needed because air quality is important for humans. The administering permitting and fee changes every 4 years is essential. If businesses were to over pollute the air could affect the environment and living conditions.

3. **Commenter Name: Kolby Cuthrell**
   Date Submitted: 21 February, 2022

Comment: I believe these changes are necessary as they add more accurately to fees, data and things that are being recorded as far as air quality fees go.

Response: *The Department notes that these general comments 1 – 3 are fully supportive and do not need individual responses. The Department does want to thank these individuals for their interest in the Air Quality of the state.*

Specific Comments (*Comments Verbatim*)

Commenter: Alaska Power & Telephone

4. Commenter Name: Jim Baumgartner, Manager of Permitting, Licensing & Compliance
Date Submitted: March 22, 2022

Comment 4.1:
On March 3, AP&T requested public records--copies of the spreadsheets used to generate the financial analysis in support of the proposed regulation packet, as the analysis just provided the results and not the underlying assumptions. Spreadsheets were posted on March 4, 2022, but fields were password locked.

To us this is a partial denial of the public records request. This prevented a critical review of the analysis in support of the regulatory packet. We alerted the Department's regulatory s point of contact of this issue on March 4, but received no subsequent response. Public record release is governed by Alaska Statute 40.25.110 and must be open for inspection by the public. The regulatory point of contact claimed no exception for releasing partial (password locked) records instead of the complete analysis. As such, we can only speculate as to the rationale behind this partial Alaska Public Records Request denial.

AP&T requests that the Department repropose the rulemaking and make available public records to allow for a thorough review of the proposed analysis.

Response: *The Department provided the requested spreadsheets on March 4, 2022, by posting them on the web with the other package documents. Standard submissions in past rulemakings have included PDF-format versions of the spreadsheets. In response to this request, the Department posted the actual spreadsheets with the data entry fields locked to prevent data-manipulation. Doing so in no way restricts the viewer from viewing the contents of any field, whether that be a data entry, a formula calculation, or any other entry. Locking the data fields ensures that the data presented to and viewed by the requestor is the actual data used by the Department, and it prevents manipulation of the data or underlying calculations that might generate false results or conclusions different from those proposed by the Department. Mr. Baumgartner's assertion that the locked data fields prevent a critical review is in error, because every field, data value or data cell reference, formula value, or otherwise was viewable. Most importantly, locking the spreadsheet fields did not deny Mr. Baumgartner an adequate opportunity to comment on proposed regulations. As follow-on comments will highlight, Mr. Baumgartner did perform an exhaustive review of the spreadsheet data, citing many fields and values to support his assertions. He did not indicate how receiving the spreadsheets with un-locked fields would have made a difference in his ability to provide meaning comments. Mr. Baumgartner further notes that he contacted the Department's regulatory contact about this reply to his request on March 4, 2022, but the Department record shows that he only made a statement that the spreadsheets were locked and did not request anything further.*

Mr. Baumgartner's request for public records was not 'partially denied." Alaska Statute 40.25.110 (Public Records Open to Inspection and Copying; Fees) states that "the public records of all agencies are open to inspection by the public under reasonable rules during regular office hours." The Department made the spreadsheets open to inspection by the public, under the reasonable rule of making the fields password-protected. No exception was claimed because none was needed. As discussed above, the password-protected fields in no way prevented Mr. Baumgartner from providing meaningful comments based on a thorough review of the proposed analysis.

The Department will not repropose this rulemaking as no error in processes or rationale has been shown.

Comment 4.2:

Fixed administrative fee changes—18 AAC 50.400: In general AP&T recognizes the need to adjust annual permit renewal charges and to adjust routine compliance and one-time compliance activity fees. We appreciate that the Department has dropped the fee appeal fee, which, to us appeared to have a punitive aspect meant to discourage permittees from challenging billing errors that do occur.

Response: *The commenter expressed support for the Department's removal of the fee appeal fee. However, the Department would like to clarify that the fee appeal fee was not intended to be punitive and was not assessed for inquiries regarding billing errors made by the Department. Rather, it was intended to be used in rare cases in which a customer requested reconsideration of fees related to the customer's missed due dates or similar issues. The Department has not been able to locate any records that an invoice has been issued for this purpose since the implementation of the last fee study.*

Comment 4.3:

US EPA 2018 guidance changes: Title I permitting activities at or for existing and potential Operating Permit Program source categories. AP&T acknowledges the footnotes 29-31 appear to allow states to optionally count certain non-title V permit costs into title V costs. To AP&T, this appears to be an internal accounting change with little outward change for the permittee universe, but will allow the Department the flexibility to use the Clean Air Protection Fund for a significant portion of what historically has been considered Minor Permit and Construction Permit program costs. A portion of receipt categories previously collected and accounted through general fund program receipts (GFPR also referred to as emission control permit receipts in this packet), will now be accounted to the Clean Air Protection Fund (AS 46.14.260). A greater percentage of what historically were GFPR administrative fee and emission fee receipts will now be deposited in the CAPF account and expenditures with what is presumed to be a concomitant reduction in GFPR receipts. Program costs will continue to be authorized through an approved operating budget and will be paid from these two accounts.

As mentioned in item 1, the locked analysis spreadsheet released on March 4 for this review precludes thorough review of how the Department adjusted the Title V administrative fees to account for this change in guidance.

Response: *The Department agrees with the commenter's summary of the change in accounting between GFPR and CAPF revenue with respect to part 70 sources. With respect to the March 27, 2018, Updated Guidance on EPA Review of Fee Schedules for Operating Permit Programs Under Title V, the Department has relied heavily on the guidance of this document as it strived to update its fee programs after a long interval. The Department's understanding of the guidance, after consultations with EPA staff, is that the guidance details the broad scope of fees or activities that support portions of the program, or what part 70 costs must include all "reasonable direct and indirect costs" as stated in Section II.A. of the guidance document. These costs now include many non-Title V activities for sources with permits that will eventually be included in the part 70 program. That authority goes far beyond the simple explanation of the footnotes identified by Mr. Baumgartner. The entire guidance document is an explanation of those activities that "look like, smell like, or act like" part 70 activities[1] any air program activity performed by an air agency under title V or part 70 must be included in program costs"[2] as well as the statement "part 70 costs must include the cost of implementing and enforcing any term or condition of a non-part 70 permit required under the Act". Therefore, the Department has changed how its accounting of fee requirements has been apportioned.*

The Department does not agree that the locked spreadsheets provided precluded a thorough review of the Department's analysis. As shown by his very detailed description of the Department's accounting fund sources, Mr. Baumgartner is well-versed in the Department's allocation of fees collected. However, as noted in the Response to Comment 4.1, locking of the spreadsheet's re-calculation ability only precludes the commenter from making changes to the Department's analysis. It in no way precluded Mr. Baumgartner's ability to thoroughly inspect, analyze, or question the Department's analysis and methodology nor the underlying data used in such an analysis. In fact, as displayed in Mr. Baumgartner's Comment 4.5 below, AP&T was able to perform an extremely detailed analysis of budgetary line-items with full access to the data used in the analysis. Locking of the spreadsheet only precluded "what-if" re-analysis of the data by changing budgetary line item values used by the Department, apportionments, or calculation formulas. The Department thinks Mr. Baumgartner has performed a thorough review of how the Department adjusted it fees, despite his assertion.

[1] Guidance, Section II.A Overview.
[2] Guidance, page 5 "Costs related to "other" permits.

Comment 4.4:

Continued use of administrative fee categories. AP&T supports the use of industry and location categories to reduce the likelihood of a low program cost permittee category from subsidizing those sources that require a greater annual level of regulatory oversite.

Proposed 18 AAC 50.400(h)--AP&T also supports the continuation of the hourly administration or compliance fee for regulatory services that are unique and/or highly variable. For example, the Air Quality Monitoring Program provides the following services: stationary Source pre-construction ambient and meteorological siting, monitoring, quality assurance reviews of collected data, and review of applicant proposals to conclude ambient monitoring programs. These services have historically been billed as a direct service and receipts deposited under CAPF and GFPR. These activities are unique depending on a given site, applicant proposal, and applicant's development plans.

Response: *The Department acknowledges and appreciates the commenter's expression of support for certain aspects of the Department's fee methodology.*

Comment 4.5:

Factors Affecting Program Costs (Emission fees). The department proposes to increase operating permit emission fees by 96% almost doubling annual fees. This represents an untenable fee increase.

Response: *Because of the size and complexity of this comment, the Department will make responses to individual issues in each section of the comment. As regards the size of the fee increase, the issue is not that the single increase is very large, as it would have been the same if the Department had performed the subject fee analysis over two 4-year spans instead of one large 7-year span. The sum-total increase would have been the same. This current analysis used a 10-year data set of look-back at actual costs and expenses in order to fully include periodic trends and the variability of economic cycles. The Department believes that this methodology provides a much more accurate analysis and incorporates more trends. Previous analysis methods have captured a rising or falling economic cycle because of the short period of the data sets used. While AS 46.14.250(g) generally provides that the Department perform this emission fee analysis each four (4) years, the Department notes that extreme conditions including Departmental staffing, Pandemic-related disruptions, and enhancements to electronic data systems have interrupted this cycle, which we believe should be a one-time occurrence.*

In the supporting analysis, the Department proposes to include the State air quality monitoring program costs to the emission fee basis. The Department added a $1,228,763 additional obligation for the monitoring program. The Department also added an annual estimated pension liability increase in the additional obligations. Also included is a category labeled "Other Known Obligations," for a total of known additional obligations of $1,715,363 increase over the total average annual actual annual expenses of $3,609,114.

Adding such excessive adjustments invites regulatory challenges that could delay or prevent the effective date of fee adjustments.

Response: *The Department acknowledges the commenters concern about increasing fees. However, the budgetary line items are what they are based on actual incurred expenses or costs and cannot be changed simply because of a wish not to increase fees[3]. Some costs are identified and included as known future obligations for the program, such as the pension liability increase that came into effect in 2021 after the fee study time period. The actions proposed by the Department comport with the 2018 Guidance.*

The Governor's December 15, 2021, FY 2023 Proposed Operating Budget Air Quality RDU Component Budget Summary reflects a decrease of $1,790,600 in designated general funds and a reduction of $342,900 of federal funds and an increase of $2,174,300 in other funds. We believe this 2023 budget proposal is not coincidental.

AP&T questions these additional obligation adjustments and requests that the known additional obligations be removed from the emission fee calculations in the final emission fee rulemaking with a revised emission fee. Below, AP&T critiques each of these three categories.

The Department is justifying the entire cost of the Air Monitoring and Quality Assurance Program (monitoring program) as an emission fee supported service, based on its interpretation of the March 27, 2018, US EPA updated guidance on EPA review of fee schedules for operating permit programs under Title V.

We can empathize with the Department regarding shrinking federal and State general funds available to pay for monitoring services. We can also empathize with the Department regarding additional burdens imposed on the monitoring program when the Fairbanks North Star Borough ended their local air quality monitoring efforts.

However, permitted stationary sources should not be held solely accountable and taxed to support all State air quality monitoring efforts—especially those state implementation plan (SIP) efforts necessary to evaluate and correct impacts primarily caused by area and mobile sources.

US EPA states that a State's State Implementation Plan (SIP) and submittal requirements must contain certain basic program requirements to manage air quality as set out in Section 110(a)(2) of the CAA such as:

- ***Ambient air quality monitoring*** and data systems <emphasis added>
- Programs for enforcement of control measures
- Adequate authority and resources to implement the plan

[3] AS 37.10.052(d)

For States with areas not meeting air standards, Section 172 requires additional programs to achieve and maintain attainment.

For the sake of brevity, we will not reiterate the Department's extensive SIP development efforts to control area source and mobile source impacts on our residents.

The air quality permitting programs are not the totality of the State's SIP. Nor should the permitted entities bear an unfair cost burden to support the totality of the Air Monitoring Program.

Response: *Basic air monitoring program resources are required for the department to implement its Part 70 program. Without maintaining sufficient staff resources and capacity, the Part 70 program could not function in a manner to meet the approved program requirements. As a result, the 2018 guidance suggests that air monitoring activities that directly supports Part 70 activities, both direct and indirect, can be included in the fee program. The Department needs to maintain sufficient capacity and therefore included the average air monitoring program costs necessary for the basic regulatory monitoring program in the fee analysis.*

The commenter concedes that the SIP and EPA regulations require an ambient monitoring system in order to understand the attainment status of the ambient air quality within the air quality regions within the State, such that the proper permits can be written to protect the ambient air quality for the public in each individual air quality region. The Department included the average air monitoring program costs that reflect a basic regulatory monitoring capacity for the state in the emission fees. The Air Monitoring Program, as well as the Air Permitting Program, cover all the air quality of the entire state. For the Monitoring Program, the primary limitation is personnel and equipment, which directly impacts the time and effort available to provide and maintain the monitoring network as well as provide permit services. With the proposed inclusion of certain basic monitoring costs into the program fees, the Department will not include or charge other costs of the monitoring program related to special projects or other activities that don't directly support Part 70 to the fees. Other costs not included in the fees are costs for emergency monitoring like monitoring for wildland fire smoke or volcanic ash and other special air quality studies with an emphasis on environmental justice. In the past three to five years, technology has rapidly evolved to produce an array of low-cost sensors for citizen science and saturation studies. These new and less expensive technologies are used to expand air quality monitoring into rural communities and to support wildland fire monitoring. None of the sensor technology for the expanding Alaskan community monitoring network and outreach and capacity building has been included in the cost calculations. Instead, the Monitoring Program has taken advantage of EPA funding, both regular 105 grant funding and special American Rescue Plan funding specifically earmarked for environmental justice, to cover the expenses of these additional activities.

AP&T generating stations are situated in remote areas, generally considered to be unclassifiable and presumed to be in attainment with state and federal ambient air quality standards, as the State does not operate or maintain long term monitoring systems in remote Alaska. Any ambient air quality or meteorological support AP&T has received would have been considered a direct service billable under the State's administrative fee structure.

Further these generating stations are so far from the nearest state monitoring site to gain any meaningful value from state monitoring efforts. The State's monitoring is simply non-representative to ambient conditions expected in Tok or Haines. Nor would AP&T's source emissions have a meaningful impact on the monitored urban airsheds. We believe we are not the only air permit user fee entity in this category.

Response: *The commenter seeks to assert that since "my corner of the state" is not the primary contributor to emissions that affect ambient air quality, they should be spared the expense of the monitoring program.*

*Covering the minimum required monitoring network, including staffing needed to support said network, through the fee structure will ensure that adequate staffing and equipment capacity are available for the direct and indirect support of the Permit Program. The commenter states that the local region of the company's stationary sources are in regions "*generally considered to be unclassifiable and presumed to be in attainment with state and federal ambient air quality standards" *(underline emphasis added); in other words they are located in regions where the true air quality status is unknown because the Department has limited monitoring resources. However, the existing network even at its minimal extent is one piece of the weight of evidence supporting assumptions of 'attainment.' AP&T benefits from that network because it helps to inform the unclassified/attainment status for the areas where their facilities are located.*

As discussed below, state monitoring is primarily directed at adverse impacts caused by mobile sources, area sources and natural events, not in response to stationary source impacts. In industrialized areas (Nikiski, North Slope and historically near Alaskan Pulp Mills), ambient and meteorological monitoring is conducted by and paid for by industry. Historically, Unalaska and Nome has conducted their own ambient air monitoring with findings of no adverse impact before the monitoring was discontinued.

The Department established long-term monitoring sites in Anchorage, Fairbanks, North Pole, Juneau, and the Mat-Su valley. According to the Monitoring Program's website, they have discontinued monitoring in non-urban airsheds such as Unalaska, Kodiak, Nome, and Ketchikan.

Anchorage and Fairbanks are carbon monoxide maintenance areas primarily attributed to by mobile sources. Juneau's Mendenhall Valley is a PM-10 maintenance area primarily attributed to by wood stove and unpaved street impacts. Eagle River maintenance area was primarily attributed to by unpaved road dust. Fairbanks is also a PM2.5 non-attainment area attributed by solid fuel and distillate fuel heating devices, mobile sources, and industrial sources. The Matanuska-Susitna Valley air pollution site attributes particulate matter impacts from wind blown dust.

The Program has also mobilized exceptional event monitoring equipment in the event of natural events such as wildfires and volcanic activities. These emergency response efforts are not the result of permitted stationary source activities.

AP&T asserts that the 2018 policy does not justify such a broad interpretation, nor does it allow for the State of Alaska to pay for the entire air monitoring program through the emission fee supported services. We reviewed the updated 2018 policy as reaffirming the department's past practice to collect administrative fees for operating permit program services. The 2018 policy, Page 7 states "The costs of "other activities" related to implementation plans, including section 110 or 111 of the Act, should not be counted for part 70 purposes if the activities are required as part of the preconstruction review process or directly relate to implementation plan development, as required by title I of the Act.

Response: *The Department disagrees with the commenter and points specifically to the 2018 Guidance document which states, under Section II, A. Overview, that Part 70 costs must include "all reasonable direct and indirect costs" that are incurred by the air agency. In regard to the commenter's assertion that the cost calculation include the entire monitoring program, see the Department's response on page 9.*

Historically, most of the air monitoring program expenses have been met through a combination of federal grant and state matching funds. The 2018 paper footnote 7 strongly warns states that Part 70 fees cannot be used as a match for <Clean Air Act> Section 105 grants and no air agency may count the activity for both grant and fee purposes. In other words, Alaska will no longer be able to leverage federal grant dollars to continue its air monitoring obligations under the State Implementation Plan. Instead, under a program receipt payment structure, the State Government will need to pay the full cost of the air monitoring program. Please see the federal fund reduction proposed in the FY2023 Governor's proposed operating budget above.

Response: *The Department agrees with the commenter that historically air monitoring program expenses have been met with federal grant/match and that the revenue from Title V/Part 70 fees used for air monitoring cannot be used as match for the Clean Air Act Section 105 grant. When the new fees are fully implemented, the department will be accounting for these costs separately as required. The department's ability to leverage federal funds will remain unchanged because other eligible activities will be undertaken through the grant program. These will include community SIP related activities and will include new non-regulatory monitoring technologies the state is deploying for wildland fire smoke management, rural and tribal air monitoring, and other pressing air quality impacts as detailed in the Department's comments on page 9. In other words, the EPA Section 105 grants will continue to cover other air quality planning, non-permit compliance, mobile source, and remaining monitoring activities (not covered by fees), tasks, and technologies employed statewide that are eligible for federal funding. Also, the reduction in federal funds proposed in the FY2023 Governor's proposed operating budget reflects the reality that the Division is not*

currently receiving grant revenue at the level authorized in the budget, while also reflecting the need to shift certain revenues collected in the fee programs from GFPR (non-Title V) to CAPF (Title V) to reflect clarifications under EPA's 2018 guidance.

As discussed in item 1, the Department released insufficient records to rigorously analyze the study. It is unclear whether the Department has included capital budget expenses in the Air Monitoring Program costs listed in the fee analysis. Those capital project costs should not be used to inflate the program costs. It is unclear whether the Department has included past GFPR or CAPF funded program costs in the Air Monitoring Program costs listed in the fee analysis. The existing program receipt revenue already pays for these services. To avoid double counting, the GFPR and CAPF program costs should be removed from the program costs.

Regarding the GFPR and CAPF services, the Department has provided and billed for stationary service direct services for the monitoring program since the inception of the Department's air quality user fee programs. Services include but are not limited to meteorologic and ambient monitoring program siting locations, quality assurance project plan review, auditing monitoring sites, systems, and QA reports, data review, and site close-out. These services are currently billed at an hourly time and materials rate under 18 AAC 50.400 and encompass the appropriate level of monitoring program support for stationary source services. The extent of the user fees historically collected under CAPF and GFPR is entirely consistent with federal program guidance through the latest 2018 guidance that the Department uses in support of its proposal.

As these fees are billed as time and material fees, the activities and collected fees are not enumerated within this regulatory packet's administration fee analysis and should not be enumerated to justify an emission fee increase.

Response: *The costs of Monitoring Program staff time charged as GFPR and CAPF are not included in the Monitoring costs shown in the Emissions calculation; they are included as permitting costs. They are not double-counted. With the exception of required basic regulatory monitoring equipment replacement (approximately every seven to ten years), no capital expenses are included in the Monitoring costs shown either.*

In the fee analysis, the Department quotes the Clean Air Act Section 502(b)(3)(A) as a basis to justify an expanded scope to include the monitoring program. Please note that U.S. EPA fully approved Alaska's State operating permit program on November 30, 2001 as listed in Appendix A, 40 CFR 70. Alaska Statutes in AS 46.14.250 authorize emission fees. State authority--AS 46.14.260 limit the use of the Clean Air protection Fund to only cover the reasonable direct and indirect costs required to support the permit program. The Department currently charges fees for the above listed direct costs to support the permit program primarily through the Administrative Fee regulations authorized through AS 46.14.240.

The 2018 paper further describes reasonable direct and indirect costs. Indirect cost examples are given as utilities, rent, general administrative support, data processing, training and staff development, supplies and postage. No where is mentioned air quality monitoring as an

acceptable cost. Instead, it warns that costs attributed to SIP development should not be included and recommends they should contact the US EPA for assistance regarding "other activities." In the fee report, there is no reference to US EPA consultation.

If no U.S. EPA formal consultation has occurred regarding the Department's proposal to include the totality of the monitoring program costs as reimbursable through operating permit emission fees, AP&T requests that the Department hold consultation and include a record of the consultation in the final rulemaking public docket.

AP&T requests that the monitoring program costs be removed from the additional emission fee adjustments. That the Department continue to fund ambient monitoring costs through a state-federal cost sharing strategy instead of stationary source permit program receipts.

Response: *Basic air monitoring program resources are required for the department to implement its Part 70 program. Without maintaining sufficient staff resources and capacity, the Part 70 program could not function in a manner to meet the approved program requirements. As a result, the 2018 guidance suggests that air monitoring activities, both direct and indirect, can be included in the fee program. The Department needs to maintain sufficient capacity and therefore included the average air monitoring program costs necessary for the basic regulatory monitoring program in the fee analysis.*

Also, while the Department's administrative staff held several consultations with EPA Region 10, there is no obligation to provide a record of internal deliberative processes in a rulemaking of this nature even if they involve external consultations. The commenter's request that a record of consultation be included with a subsequent revised rulemaking has no basis in regulation.

The Department also added an annual estimated pension liability increase of $312,600 in addition to the average annual administrative actual expenses of $493,667. As mentioned in the fee report, the Department applies a consumer price index to adjust for the 10 years of actual expenses evaluated. Absent the department's complete release of analysis records, we are conjecturing that ongoing pension liability is already included as a subset of the administrative actual expenses and has been included and adjusted for inflation. The liability appears to apply to both the permitting and monitoring programs.

As mentioned above, we believe the Department has erred by including the entire monitoring program cost as an emission fee supported service. If the Department insists on including this pension adjustment in the final emission fees, they should back-out any additional pension liability to account for the overlie broad incorporation of the monitoring program costs in response to the comments above.

Response: *The estimated pension liability increase occurred in 2021 after the data range of this fee study and is not related to or counted within the administrative actual expenses. The amount included as "average annual administrative actual expenses" is the average annual amount paid from fee proceeds to the*

Department of Environmental Conservation, Division of Administrative Services for department-level support costs, such as administrative, procurement, subsidiary financial system, IT, and other support. In contrast, the "estimated pension liability increase" is the result of SB55 (Ch 9 SLA 2021), which required that the State of Alaska increase contributions to the Public Employees Retirement System (PERS) pension fund. The increased pension costs are not included in any actual expenses of the study period, as the requirement to increase pension contributions is the result of legislation passed after the end of the study period.

As mentioned in the 2018 paper, U.S. EPA is obligated to conduct oversight activities to verify each State's program administration. U.S. EPA has done so as recently as 2015.

The 2018 US EPA revised guidance references a U.S. EPA Office of Inspector General Report No. 15-P-0006 which found nine state programs as not collecting fees sufficient to cover all reasonable costs required to develop and administer its title V program. https://www.epa.gov/sites/default/files/2015-09/documents/20141020-15-p-0006.pdf. Of note, the OIG report does not list Alaska as a State with insufficient fee collection authority. Of further note, although US EPA Region 10's latest September 2015 Title V program review documented the need for Alaska to increase fees, it also acknowledged that "Alaska plans to have a new fee structure in place by fall of 2015." https://www.epa.gov/sites/default/files/2015-10/documents/title-v-program-review-adec-2015.pdf. Alaska adopted updated its fee regulations on September 26, 2015 through which it addressed US EPA's sole fee issue.

US EPA's 2020 State Review Framework, did not document funding as an issue for its Clean Air Act (CAA) portion of the review. Nor did US EPA find fault with staff compliance and enforcement training and performance. https://www.epa.gov/sites/default/files/2020-01/documents/srf-rd4-rev-ak.pdf.

Objective third party program reviews carry more weight than internal assessments, which may and do reflect internal program biases. Absent a documented objective basis of concern, it appears premature to add other known obligations such as staff training, travel and related costs not already included in the actual expense base.

We urge the Department to support its claims through objective third party findings when adding costs to correct self-perceived program deficiencies.

Response: *The Department disagrees that 3rd party review is required for any agency action, as the commenter did not provide an opinion of when it was prudent and when it was not, nor when it was mandatory and when it was not. There is 3rd party objective review via the public process so that the commenter's assertion appears to be satisfied outside of any regulatory requirement for extra-agency audits. In a past fee study review, the Department did have 3rd party audit of accounting systems when there was significant comment on the results. The program was much younger at that point, and fee systems were in a considerable state of flux; that no longer remains the case.*

The EPA documents cited above were relevant program reviews during the author's time with the Department; however, they are obsolete in this current timeframe. Costs change, inflation increases, and, even more so, emissions decreases, all of which affect an emission fee program based on tonnage, which is the basis for many states' programs. A prime example that occurred as Alaska was beginning our fee review was a similar study by North Carolina[4] that informed our efforts. In fact, the topic of declining revenues in Part 70 programs is active and very current[5].

Regarding the commenter's assertion that "it appears premature to add other known obligations such as staff training, travel, and other related costs," it should be noted that spending on travel and training was dramatically curtailed during the latter years of the study period. This reduced spending level was found to be unsustainable. The "other known obligations" section for this represents the amount that is not already included in actual expenses, due to the afore-mentioned curtailment. This amount is required to restore a necessary program of staff training and travel associated with direct performance of compliance, permitting, and related oversight responsibilities.

Moreover, as regards the EPA 2020 State Review Framework "audit", the report presents an incomplete picture of the status of the Department. As the commenter is very much aware from his time as an agency employee, many vital training activities and subject matter educational opportunities were delayed because of a lack of proper funding during the time period analyzed by this fee study. The 2020 SRF report cited by the commenter is noticeably silent on any discussion of the training status of Departmental staff. That lack of comment does not imply tactic approval of the Department's training status, only that EPA did not find it an issue worth commenting on as it was understood by EPA that there were similar budget concerns currently affecting all agencies.

Commenter: Alaska Oil and Gas Association

5. Commenter Name: Kara Moriarty, President and CEO
Date Submitted: March 25, 2022

Comment 5.1:
Effective Date
Based upon the 18 AAC 50.420 language and the current timing of the fee changes, it appears DEC will be retroactively applying the full assessable emission fee rate increase to the assessable emission estimates reported in 1st QTR 2022 (e.g., 2021 actuals).

Many company budgets are established at least a year in advance which means such fee increases are unbudgeted. Companies try to forecast in advance potential financial impacts, but given the way the budgets are established there is no reasonable way the regulated community

[4] https://files.nc.gov/ncdeq/Air%20Quality/Calendar/Planning/september2020/NCDAQ_TV_FEE_AQC_Rule_Sept_2020.pdf
[5] EPA Updates Response to OIG Report on Declining Title V Fee Revenues, Plans NACAA Consultation (March 22, 2022); https://www.4cleanair.org/wp-content/uploads/WashingtonUpdate-2022-03-25.pdf

could have budgeted these increases in advance. We recognized DEC did contact certain impacted parties in advance; at the time DEC indicated the fees would not be retroactively applied which appears contrary to the 50.420 language. We recognize the Part 70/71 Operating Permit Program must be funded through the fees imposed under 50.400 and 50.410 but the retroactive application of the increases is burdensome especially with companies and other industries which do not have the financial resources to absorb an unbudgeted financial hit. Therefore, we strongly recommend DEC delay the effective date of the fee increases to January 1, 2023; companies' calendar year 2022 budgets will likely not be impacted, and the new fees would then be effective for the second half of the State's fiscal year. If we erred in our interpretation of 50.420, meaning the fees will not be retroactively applied, AOGA requests DEC revise the regulation text to be clearer.

Response: *The comment is generally supportive of the Department's fee methodology for certain functions. The Department conducted electronic outreach to AOGA and various member companies on July 23, 2021, to preempt many questions regarding the (then) pending fee study results. Preliminary results were shared with the AOGA members without exact, specific monetary amounts which had yet to be finalized. The Department is well-aware and understands the financial impact on small companies operating within the state, and even those of larger companies that may still be financially constrained.*

Unfortunately, delaying the effective date of the fee increase does nothing to help the Department meet its own obligations. The permit administration fees of 18 AAC 50.400(a) are billed each fiscal year, on or before July 15th for the period July 1 of the current year to the following June 30. However, the permit administration fees are not the object of contention. Under 18 AAC 50.410(a), the owner or operator also pays an emission fee amount based on that year's (past) actual emissions. Regardless of when the fee regulations become effective, the emissions fees will be charged "next year" based on either what was reported as emitted "this year" or the "potential to emit" for the facility based on the air permit. While this may give an appearance of being retroactive on the surface, it in fact is not. The appearance of retroactivity is a result of the misalignment of fiscal budget years between industry and the State, and delaying the effective date only compounds the budgetary issues of the Department that brought us to this rulemaking. The outreach that was conducted by the Department had a twofold informational purpose: (1) to inform the permitted entities that the rulemaking was coming, and (2) to inform them to plan to start budgeting now. Yes, final individual facility fee amounts and actual rulemaking figures were unavailable, but a very close "guesstimation" was provided that turned out to only miss it's mark by ~4%. Increasing fees and financial constraints are always an issue affecting the permitted universe, but as much advance warning was provided as the Department had available.

The updated fees will only be applied to the portion of the state fiscal year during which they are effective. In other words, they are not applied retroactively. Fee increases or decreases will take effect upon the effective date of the regulations. The Department will issue supplemental, adjusted, prorated billing (or crediting)

based on the new fee increases (or decreases) for the remainder of the fiscal year in order to maintain sufficient funds for permitting services.

The proposed language in 18 AAC 50.420(a) updates the dates for supplemental billing procedures for the permit administrative and emission fees to reflect the current fiscal year and effective date of the regulations. The supplemental billing will cover the difference between already billed fees for the current fiscal year, based on the current regulations, and the updated fees. The updated fees will be in effect for the remainder of the current fiscal year following the effective date of the revised regulations and for subsequent years until the next fee study establishes new fees. These supplemental billing procedures have been in place since the fee revision regulations that became effective on September 26, 2015.

Comment 5.2:

MG1 and MG2 Routine Compliance Fee

The current routine compliance fee for the MG1 and MG2 is a flat $750 per permit per year, DEC is proposing to shift this to a time-and-expense (T&E) basis. The 2021 Fee Study Report (page 10) states, "Additionally, due to significant variability amongst sources, Routine Compliance costs for Oil and Gas drilling minor permits were moved to a time-and-expense billing and are no longer expressed as a flat fee."

The MG1 and MG2 permits are general permits with static conditions, i.e., compliance conditions are the same for every MG1 and every MG2 that is issued.

An MG1 can only be obtained for a single drilling rig, which can drill at multiple locations for a specified period of time. There is no variability amongst sources or compliance conditions when an MG1 is employed. The rational expressed by DEC to shift to a T&E basis for an MG1 is unfounded. AOGA suggests reverting back to a flat fee for the MG1 permit. If there is data to support increasing the fee from $750 per permit, AOGA is not opposed to this increase. However, AOGA would be interested to understand how much time DEC has historically spent on compliance for MG1s and contends that the compliance fee for MG1s would most likely decrease. AOGA members have expressed no known DEC compliance auditing on an MG1 permit since July 1, 2009, the beginning of the fee study report period.

An MG2, in contrast to the MG1, can have multiple drilling rigs operating under a single permit. This means that there may be more emissions sources but does not necessarily indicate a "significant variability" amongst sources. No matter how many drilling rigs are operating under the MG2, there are still only the same six emission sources listed within Table 1, the Emission Unit Inventory. These six emissions sources have the same compliance requirements regardless of how many there are. AOGA does recognize that the more sources there are, the more the compliance cost should be, therefore rather than a T&E fee, AOGA suggests a flat fee based on the number of drilling rigs that were used in a given year under the MG2. For example, assuming the flat fee per drilling rig was $750 and a permittee used three rigs in the previous year, the fee to DEC would be $2,250. The fee paid to DEC will vary year over year depending on how many drilling rigs were operating under the MG2.

Response: *The Department disagrees that there is no variability with the MG1 or MG2 source universe as regards compliance fees. Cost data during the study period shows a significant variance of costs incurred for MG1 Routine Compliance by*

source (e.g. from $16 to $4439/facility for ten year period). Variability can be the result of physical location differences; whether the rigs are collocated at a Title V facility;, detail and ease in review of fuel-use monitoring plans with a variety of permitted options and formats; number or existence of any excursion days in a reporting period;, whether units operated during a reporting period; legal fees; or other elements. Additionally, because the MG2 was issued more recently, there is limited data of periods and times under which an average cost can be determined; until operation and reporting have sufficient time to normalize, the data for costs associated with compliance is subject to wider variability. While this level of variance does not support continuation of fixed fees, the Department does anticipate that assessing T&E fees instead will result in lower overall charges for MG1 Routine Compliance for each source. The fees will be re-evaluated in the next fee study to determine whether T&E fees are still appropriate or if fixed fees should be reestablished.

As regards MG-2 permit compliance review fees, because the MG2 permit is relatively new, cost data during the study period was very limited. Based on the limited data that was available, significant variance of cost by source was noted. It is unclear at this time whether a fixed fee will ultimately be appropriate, but the available data did not support a fixed fee. This will be re-evaluated in the next study.

Comment 5.3:

Air Monitoring Program incorporated into Assessable Emissions Fee

AOGA agrees with DEC that the Ambient Air Monitoring Program (AAMP) qualifies for cost recovery, however, disagrees that the Assessable Emissions Fee is the most appropriate cost recovery mechanism. The AAMP should recover costs based on a T&E basis.

According to the State's Air Monitoring & Quality Assurance Program Quality Assurance Project Plan (QAPP), the current DEC run air monitoring network consists of one National Core (NCore) monitoring station (Fairbanks), State and Local Air Monitoring Stations (SLAMS), and Special Purpose Monitoring Stations (SPMS).

The purpose of each of these kinds of stations is found in Section 10.1 of the QAPP, AOGA has listed the objectives of each station in the table below:

Station Type	**Monitoring objectives**
NCore	• Represent ambient concentrations over a neighborhood scale representative of many similar neighborhoods; • Represent an area impacted by mobile source emissions; • Represent an area not impacted by unique local emission sources; • Remain a long-term site with reasonable assurance of 5+ year "permission" period; • Be collocated with an STN or NATTS site, if possible; and

	• Have room for multiple gas monitors and associated equipment, integrated samples, meteorology.
SLAMS	• Determine compliance or non-compliance with the NAAQS/AAAQS; • Best represent the exposure of populations that may be affected by elevated criteria and non-criteria pollutant concentrations; and • Meet EPA objectives. The design of the SLAMS/SPM network must achieve one of six basic monitoring objectives as described in 40 CFR Part 58, Appendix D. These are: o Determine the highest concentrations expected to occur in the area covered by the network; o Determine representative concentrations in areas of high population density; o Determine the impact on ambient pollution levels of significant sources or source categories; o Determine general background concentrations levels; o Determine the extent of regional pollution transport among populated areas, and in support of secondary standards; and o Determine the welfare-related impacts in more rural and remote areas (such as visibility impairment and effects on vegetation.
SPMS	Station objectives are not listed for these stations. AOGA assumes it is because the purpose for these stations will vary from project to project.

The overarching purpose for NCore and SLAMS stations is for public health, which is a much broader application than the population of Title I and Title V owners. Alaska's non-attainment areas are associated with widespread residential wood burning and occasionally from natural causes (windblown glacial silt, wildfire smoke), not from industrial activities. Permitted entities should not be burdened to subsidize a program which benefits a much greater population. The T&E to operate and maintain the State's network should be a fee billed back to the municipality/borough/community, which is benefitting from the monitoring, or paid through the State's general fund as a state-wide service.

The same concept holds true from a permittee's perspective. When oil and gas operators need ambient air monitoring data for permit applications, they are responsible for obtaining that data and submitting it to DEC for approval for utilization. This is a clear case when the T&E of DEC should be directly billed to the entity requesting those services. No other permittee should be burdened with the cost of a requested permitting action.

Response: *The Department disagrees with the commenter. While a large component of the current nonattainment area air quality impacts can be traced back to residential home heating, it is by far not the only contributor to the particulate matter pollution. The purpose of the NCore and SLAMS networks is to provide baseline air quality data as well as monitoring any exceedances of the federal and state*

standards. Basic air monitoring program resources are required for the department to implement its Part 70 program. Without maintaining sufficient staff resources and capacity, the Part 70 program could not function in a manner to meet the approved program requirements. As a result, the 2018 guidance suggests that air monitoring activities, both direct and indirect, can be included in the fee program. The Department needs to maintain sufficient capacity and therefore included the average air monitoring program costs necessary for the basic regulatory monitoring program in the fee analysis.

Commenter: Trident Seafoods Corp., Peter Pan Seafood Company LLC, and Nushagak Electric Cooperative, Inc.

6. **Commenter Name: Kevin Mattews, for Steigers Corp.**
   Date Submitted: March 24 & 25, 2022

Note: The Department received three (3) separate public comment submissions by the same author on behalf of three individual permitted entities in response to this proposed rulemaking. The comments, although individually received, were substantially similar enough to warrant grouped responses except where specific individual concerns are identified. Thus, the Department will address the set of comments provided on behalf of Nushagak Electric Cooperative (Nushagak) as being the template for the essentially similar comments provided on behalf of Peter Pan Seafoods (Peter Pan) and Trident Seafoods (Trident). Where appropriate, the identifier of "Nushagak" will refer to "Nushagak (et al)" to refer to these essentially similar comments from Nushagak, Peter Pan, and Trident.

Comment 6.1:
(*From Trident*) The fee increases proposed by ADEC are extreme and pose a substantial burden on Trident and its customers. Assuming actual emissions in 2022 are similar to 2021 actual emissions, the proposed increases will nearly double the amount Trident will be required to pay in total fees for 2022.

(*From Peter Pan*) The fee increases proposed by ADEC are extreme and pose a substantial burden on Peter Pan and its customers. Assuming actual emissions in 2022 are similar to 2021 actual emissions, the proposed increases will nearly double the amount Peter Pan will be required to pay in total fees for 2022.

(*From Nushagak Electric*) The fee increases proposed by ADEC are extreme and pose a substantial burden on Nushagak and its cooperative members. This year, Nushagak paid emission fees of approximately $12,300; assuming similar actual emissions in 2022 as 2021, that amount will increase to approximately $25,000. Including the increased administrative fees, Nushagak will owe approximately $30,000 in air quality-related fees in 2023.

Response: *The Department understands the concerns and has not proposed the increased fees lightly without knowledge of the burden that such an increase imposes on the permitted point sources.*

Comment 6.2:

(*Identical submissions*) As the 2021 Fee Study Report (2021 FSR) indicates, the current fees became effective in September of 2015 and were set based on a fee study conducted in May of 2015, nearly 7 years ago. According to AS 46.14.250(g) and 37.10.052(b), the Department is required to evaluate fees and report the results of the evaluation at least every 4 years. Had the Department followed the law, fee increases may have been more incremental and, therefore, more manageable.

Response: *The Department understands the requirements of AS 46.14.250(g) and has generally been able to complete timely fee reviews in past undertakings. A substantial number of unique circumstances in this cycle has led to an extended review period, which nonetheless was completed expeditiously with as much quality as possible. That notwithstanding, the incremental fee increases would have ultimately arrived at the same conclusion, albeit in smaller steps. Fully understanding the ramifications of this proposed action, the Department conducted extensive pre-publication outreach with many permitted sources and or industry groups to help mitigate and minimize the "shock effect" that was expected. Understandably, not every single responsible official or industry representative was able to be provided the outreach materials personally. In future rulemaking proposals of this nature, the Department will strive to do better as regards outreach.*

Comment 6.3:

(*Essentially similar submissions*) Nushagak notes that the presumptive minimum emission fee determined by EPA for the 12-month period of September 1, 2021, through August 31, 2022, is $54.37. Though states are not required to limit emissions fees to this presumptive minimum level, it is notable that the emission fee proposed by the Department is over 50 percent higher. Further, the presumptive minimum fee level appears to be an effective cost-per-ton level that should represent total fees collected to support implementation of Title V requirements. Nushagak's effective total fee rate under the proposed increases will be approximately $100 per ton of assessable emissions, nearly double the current presumptive minimum emission fee and an 80 percent increase relative to the former fee schedule.

Response: *The Department notes that a presumptive minimum emission fee is a fee established by EPA for "new" Part 70 programs that do not have the ability to review past actual cost data to establish a programmatic set of fees. This presumptive minimum is what EPA understands that a generic newly approved Part 70 program would need to charge at a minimum to be a viable sustaining program. ADEC is past that point and has a history of Part 70 fees that have been established since full program approval on November 30, 2001. EPA, in the 2018 Guidance, states on page 2 that "The EPA will generally presume that a fee*

schedule is sufficient to cover program costs if it results in the collection and retention of fees in an amount above the "presumptive minimum"" …and thus no lower floor is set for established agencies because each agency's costs will vary by the type of program established. During the fee study development process, the Department queried other CAA agencies that were having similar fee issues. The Department identified (see footnote 4) that while some states had Title V fees lower than Alaska, the converse was also true where many states had Title V fees substantially higher than Alaska, even after the proposed fee increases (see footnote 4, page 1 of the guidance). There is no standard program where one-size, or one fee, fits all. EPA continues to address the inadequacy of many states' fee-based CAA programs that are failing to adequately address program costs. EPA has set, as described in the guidance, very clear rules on the need for CAA programs to be self-sustaining, "…and requires the fees to be sufficient to cover all reasonable permit program costs."

Comment 6.4:

(*Essentially similar submissions*) Nushagak understands that general costs for the Department have been increasing and will continue to increase; Nushagak and its cooperative members experience similar increases. But Nushagak generally attempts to control cost increases through a variety of means including improving processes, evaluating and implementing alternative materials and support services, and eliminating unnecessary costs. The Department has not demonstrated that these types of actions have been analyzed and considered. Importantly, Nushagak attempts to forecast cost increases and avoid significant incremental increases. The current proposal precludes the exercise of such prudence.

Nushagak suggests that, if the Department is truly interested in assessing fees in the most equitable, supportable, and effective means possible, a stakeholder group should be assembled and tasked with comprehensively reviewing the current air quality program and optional funding approaches, including those of other states. See, for example, the 2014 NACAA *Funding of Title V Programs* report.[6]

Response: *The points made by the commenter are well-taken, but they ignore the fact that the Department has undertaken significant streamlining of its CAA program and other regulatory functions in past years as steps to maintain services without raising fees. Examples include: positions (staff) have been reduced or left vacant to save costs where appropriate; Lean®-permitting methods have been introduced and adopted in Title I permitting actions; regulations have been reduced (eliminated) or streamlined where appropriate and continue to be reviewed for efficiencies; and electronic reporting steps have been introduced (with great pushback in many cases) in order to reduce "hands-on" handling of paper documents where appropriate. However, these steps only take an agency so far where core legislative requirements must be maintained such as timely performance standards for service to the permitted source base.*

[6] https://www.4cleanair.org/wp-content/uploads/Documents/FeeAnalysis_2014NACAASurvey_Dec2015.pdf

While the Department might benefit from working with an exhaustive industry-supported stakeholder group to assist in designing and structuring an updated fee system, we also acknowledge that the original fee programs were the subject of a significant stakeholder workgroup effort and the last stakeholder group to design a general permit took over 10 years to complete its effort. The Department's established fee analysis and development process has proven to work within certain limitations to establish fees that accomplish the agency's needs within the contemporaneous timeframe of each individual rulemaking. We also realize that this is a continuing effort to find efficiencies, minimize costs, as well as position the Department for success. All these efforts have costs associated with them.

Comment 6.5:
(*Essentially similar submissions*) As discussed below, many of the justifications given in the 2021 FSR for the proposed increases are inadequately explained or are otherwise questionable.

- The 2021 FSR indicates that a significant driver for the proposed fee increases is a 2018 change to guidance from the U.S. EPA on setting fees to fund Title V programs (Updated EPA Fee Guidance). The 2021 FSR states that, "This [EPA] guidance replaced the fee guidance last provided in 1993." Although EPA did update its fee guidance, the introduction to the revision observes: "These updates are consistent with the fee requirements of Title V and part 70, as well as prior guidance on fee requirements. Accordingly, these updates do not themselves provide substantively new fee guidance or create any inconsistencies with fee requirements or prior fee guidance." This statement seems to contradict the sudden and significant adjustment the Department implies.

Response: *The 2018 Guidance does not contradict the previous fee guidance in any manner as stated in the introduction of the guidance, but this updated guidance provides new and expanded discussion of what may be considered Title V (or Part 70) fees. This is an expansion and clarification of what was allowed under the previous guidance, not a "radical change" for EPA purposes. As explained in the guidance, an expanded policy discussion of what is a "reasonable direct and indirect costs" is provided. However, the Department may consider this change as "significant" because it shifts how fee revenue is accounted for by the Department in a major way (e.g. what fees/activities fall under GFPR vs. CAPF) and brings entire new portions of the CAA program into the fee collection umbrella.*

- The 2021 FSR indicates that coverage of costs related to implementing the Federal CAA has shifted to Title V program fees from revenues related to Title I implementation requirements. Accordingly, at least a portion of the proposed fee increases should be offset by reduced fees and other types of revenue collection mechanisms elsewhere. For example, if the Department formerly allocated cost-recovery fees related to an application for a complex Nonattainment or PSD NSR permit to its Title I program but intends to now recover those costs using Title V fees, will the cost for a specific Title I permit application be reduced?

If this cost recovery shifting will reduce fees elsewhere, the Department should elaborate. If that is not the case, an explanation is warranted.

Response: *The basic question in this comment is if we are sweeping these functions from one category to another, will one category's fees decrease by a similar amount to that which the other category increased? The simple answer is "no", because the new guidance explains (page 5, "Costs related to "other permits") that if it "looks like, smells, like or acts like" a Part 70 fee, then the agency may charge Part 70 fees from the start. The prime example used in the comment regards a PSD permit, which by its very classification is a major source, which means that initial Title I permitting will be charged Part 70 fees because the source "will be" a Part 70 source at the appropriate permitting juncture. The guidance states that these sources should have been charged Part 70 (or Title V) fees all along since the initial work supports what will become a Part 70/Title V source. This represents a change from the previous 1993 fee guidance only in its interpretation of what may be counted as Part 70 costs. One may expect the shifting of fees from a Title I permitting action to a Part 70/Title V fee collection to be equal and offset, but those fees were always set at different amounts in previous fee studies. Further, the underlying data for this fee study that was analyzed under this new guidance is new data reflecting the actual costs of the program and known future obligations, so it is not just taking the same underlying data from the previous fee analysis and shifting it between Title I and Title V classification. The results of this fee study reflect the combined effect of the updated cost data and the impacts of applying the new guidance.*

While not specifically addressed in this comment, but a germane topic to it even though the comments on this proposed fee rulemaking have been centric to the emission fee portion of the regulations, is the fact that there are permit administration fees that will <u>decrease</u> as a result of the fee study analysis based solely on historical data generated during the fee study, not due to a shifting of fee collection.

- The 2021 FSR indicates that, according to the Updated EPA Fee Guidance: "…costs associated with ambient air monitoring or emission inventories necessary to implement the part 70 program are eligible part 70 costs, and they should therefore be recovered under permitting fees." Based on this, the Department has determined that "the costs of the Monitoring program within the division are … eligible costs for fee calculation purposes." The Department's interpretation of this portion of the Updated EPA Fee Guidance is overly expansive and fails to recognize the key qualifier of applicable ambient air monitoring costs: they must be "necessary to implement the part 70 program." A companion document to the Updated EPA Fee Guidance is the September 1993 "Matrix of Title V-Related and Air Grant-Eligible Activities." Under applicable Title V permit activities for calculating Title V fees, this document lists

> "[e]stablishment, operation, and maintenance of *that portion* of a multiple site ambient monitoring network *which is necessary for the issuance of a Title V permit or permits* (*as documented in the I permit issued to the source or group of sources*)." (Emphasis added)

This clarifies that costs associated with an agency's entire ambient air quality monitoring network are not to be covered by Title V program fees, but only those related to circumstances in which a Title V source is required by a Title I permit or other regulatory mechanism to monitor ambient air quality. Such circumstances are extremely rare and likely do not currently exist within Alaska.

In introducing the Updated EPA Fee Guidance, EPA observes that

> "operating permits are intended to identify all federal air pollution control requirements that apply to a facility ("applicable requirements") and to require the facility to track and report compliance pursuant to a series of recordkeeping and reporting requirements. Section 502(b)(3) of the CAA requires each air agency to collect fees "sufficient to cover all reasonable (direct and indirect) costs required to develop and administer" its title V permit program."

Monitoring the effects on NAAQS from all emissions sources—including mobile, residential, minor stationary, and adjacent state sources—is a Title I and Title III requirement:

> "The EPA rules for ambient air monitoring are authorized under sections 110, 301(a), and 319 of the Clean Air Act (CAA). [Sections 301 (Administration) and 319 (Air Quality Monitoring) are part of CAA Title III, General Provisions]. Section 110(a)(2)(B) of the CAA requires that each State implementation plan (SIP) provide for the establishment and operation of devices, methods, systems, and procedures needed to monitor, compile, and analyze data on ambient air quality and for the reporting of air quality data to EPA." 71 FR 61235

These general ambient air monitoring requirements only intersect with Title V requirements on rare occasions when a Title V source is required to monitor its particular impacts on one or more NAAQS.

Note that the fee guidance on this topic is not new. The Title V implementing rules at 40 CFR 70.9(b)(1)(v) identify emissions and ambient monitoring as applicable "permit program costs…*as they relate to the operating permit program for stationary sources*." (Emphasis added) This does not mean that all ambient air quality monitoring conducted by a state is a cost that should be covered by Title V fees.

As the most recent plan indicates, the Department's ambient air quality monitoring network is limited to only the monitoring required by its State Implementation Plan for NAAQS protection, which is a Title I requirement. The 2021 FSR indicates that this is justification for funding the monitoring network out of permit administration and emissions fees. It states that:

> "Without this minimum regulatory monitoring network, the Department would not be able to fulfill its requirement for ambient monitoring assessment in support of a delegated Air Permit Program."

This tautology leads to an unfounded assumption that the monitoring network must, therefore, be funded by administrative and/or emissions fees:

> "Because the current monitoring program constitutes the minimum necessary to meet regulatory requirements, 100% of the cost of the current program is eligible for inclusion in the fee program."

Apparently, the monitoring program is now appropriately funded through some other mechanism. The Department fails to explain what that mechanism is, why it is no longer appropriate, and why fee-based funding is now determined to be more appropriate—or appropriate at all.

Response: *The Department agrees with the commenter that historically air monitoring program expenses have been met with federal grant/match and that the revenue from Title V/Part 70 fees used for air monitoring cannot be used as match for the Clean Air Act Section 105 grant. When the new fees are fully implemented, the department will be accounting for these costs separately as required. The department's ability to leverage federal funds will remain unchanged because other eligible activities will be undertaken through the grant program. These will include community SIP related activities and will include new non-regulatory monitoring technologies the state is deploying for wildland fire smoke management, rural and tribal air monitoring, and other pressing air quality impacts as detailed in the Department's comments on page 9. In other words, the EPA Section 105 grants will continue to cover other air quality planning, non-permit compliance, mobile source, and remaining monitoring activities (not covered by fees), tasks, and technologies employed statewide that are eligible for federal funding.*

However, basic air monitoring program resources are required for the department to implement its Part 70 program. Without maintaining sufficient staff resources and capacity, the Part 70 program could not function in a manner to meet the approved program requirements. As a result, the 2018 guidance suggests that air monitoring activities, both direct and indirect, can be included in the fee program. The Department needs to maintain sufficient capacity and therefore included the average air monitoring program costs necessary for the basic regulatory monitoring program in the fee analysis.

- The 2021 FSR states that the Updated EPA Fee Guidance "[c]larifies that all fees should include adjustments for inflation to match the consumer price index." The Updated EPA Fee Guidance only mentions indexing to inflation with reference to the "presumptive minimum" fee schedule under CAA § 502(b)(3)(B) [40 CFR § 70.9(b)]. By statute and rule, this presumptive minimum fee is adjusted annually based on the consumer price

index. The 2021 FSR does not indicate how inflation will figure into the Department's ongoing maintenance of the air quality-related user fees. How does the Department intend to avoid significant step increases to fees due to inflation in future fee evaluations?

Response: *The Department is required to set fees at a level sufficient to cover all direct and indirect costs of the program. This includes costs that are higher as a result of inflationary factors. The Department anticipates inflation in its setting of fees in order to avoid the need to suddenly increase fees outside a fee study. A conservative CPI estimate of 2% per year over the four year period these fees are expected to be effective has been included and averaged to allow stable year-over-year fees until the next study is completed. If actual inflation differs from this this figure, the difference will add to or subtract from fees set in the next study.*

As regards the "presumptive minimum", that Part 70 fee calculation amount is established to set a floor for newly established CAA programs. EPA does adjust the presumptive minimum fee in regulation[7] by CPI adjustments. The Department is beyond using the presumptive minimum in fee calculations as we have many years of historical data to use in fee rate establishment.

- 2021 FSR indicates that a significant portion of the proposed fee increases results from the increasing complexity of the permits. Increasing regulatory complexity is not a valid reason for cost increases. First, the Clean Air Act and its many parts related to stationary sources have changed little in the last decade or more. Second, rather than extract additional money from heavily regulated sources to pay for complex regulations, government should strive to improve the efficiency and effectiveness of those regulations. ADEC should be asking:
    - How much of the money spent on permitting and compliance assurance actually reduces adverse effects on air quality in general and human health in particular?
    - How much of that money is spent on ensuring compliance with complex procedural requirements that have little or no environmental or human health benefit?
    - How can the Department continually improve its administration of complex air quality regulations such that desired objectives are achieved with increasing efficiency?

Response: *Regarding the first general idea within the comment, the Department disagrees and states that increasing regulatory complexity is certainly a valid rationale on which to base increased fees. Regulations have, and are continuing to, become increasingly more complex over time, and regulatory changes show no signs of slowing down. For example, using eCFR (https://www.ecfr.gov/current/title-40/chapter-I/subchapter-C) to examine CAA-specific regulations in Sub-Chapter C, a quick scan shows that individual subsections are increasing in number at a steady pace and becoming longer and more complex, with varied mandated*

[7] https://www.epa.gov/sites/default/files/2020-09/documents/fee70_2021_6.pdf

*compliance requirements and alternative monitoring formats. Many new subparts require electronic reporting via CEDRI that must be monitored externally from permit compliance monitoring. Newer subparts are also requiring more directly specified performance testing requirements. Also, a number of industry-specific rules that have been finalized recently have remanded, revised, and re-promulgated rules (including NSPS OOOOa/OOOOb/OOOOc), all of which have to be tracked and understood by staff. Newer statewide-umbrella regulations such as the Clean Power Plan (CPP) or Affordable Clean Energy (ACE) or any subsequent follow-on need to be reviewed, understood, and tracked. Permit writers are required to track specific applicable requirements for individual permits, and compliance inspectors have myriad compliance alternatives or compliance monitoring subsets to track. These all take increasing amounts of time away from actual tasks just for staff to stay up-to-date and conversant with the latest version(s). Larger portions of staff time are required to be utilized just to self-train on the latest regulations specifically since staff formal training availability as well as travel funding for job-specific training has decreased. The Department disputes the commenters assertion that "*the Clean Air Act and its many parts related to stationary sources have changed little in the last decade or more".

*Second, the commenter states "*rather than extract additional money from heavily regulated sources to pay for complex regulations, government should strive to improve the efficiency and effectiveness of those regulations." *As noted in previous replies, the Department has made and continues to make efficiency advances in all facets of the CAA programs. The Department routinely makes public comment on current EPA regulatory changes and has fought to reduce the regulatory burden of new regulations. If EPA promulgates a new, revised Other Solid Waste Incinerator (OWSI) Rulemaking[8] that identifies a 55-gallon drum SmartAsh cyclonic burn barrel as an individual emission unit that alone and by itself requires a Title V permit, it won't be because the Department did not spend substantial amounts of time responding to that proposal[9] (for one example). The Department can cite many other extensive comment actions on proposed Federal rulemakings as we strive to improve the efficiency and effectiveness of regulations on behalf of permitted stationary sources within Alaska. These take significant staff time and effort.*

- ADEC and EPA have implemented cost-saving measures over the last several years. For example, ADEC has created and is expanding the use of a Permittee Portal for electronic uploading of applications and reports through its Air Online Services website. As another example, EPA revised its ambient air monitoring requirements for states in 2006 resulting in reduced costs:

8

EPA-HQ-OAR-2003-0156, Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Other Solid Waste Incineration (OSWI) Units

9 ADEC AQ ltr of October 15, 2020 submitted via Submittal via Federal eRulemaking Portal, http://www.regulations.gov.

> "The final amendments to 40 CFR part 58 will reduce annual ambient air monitoring costs for State and local agencies by approximately $6.2 million and 48,546 labor hours from present levels." (Revisions to Ambient Air Monitoring Regulations, 10/17/2006, 71 FR 61235)

Are savings from these efforts accounted for in the proposed fee increases?

Response: *The Ambient Air Monitoring Regulations have been revised several times since 2006. ADEC adheres to the federal regulations and uses the recommended technologies and network design. The current monitoring network is the minimal network needed to satisfy federal regulations. Many of the revisions EPA instituted since the 2006 regulation revisions expand the use of technology along with more stringent requirements for quality assurance and quality control. In reality, air monitoring requirements and other changes with respect to monitoring operations in Alaska have increased the workload for the air monitoring program.*

- Clarification is needed for the following justification of routine compliance fee increases that are specific to minor source permitting needs:

> "Specifically for Minor Source Specific (MSS) Routine Compliance, additional factors have contributed to increased costs. An MSS Permit reflects a change at a stationary source that was previously issued an Air Quality Permit with Title I conditions. Each MSS Permit issued to an already regulated stationary source represents an additional layer of conditions and thus compliance work that has to be conducted by the Air Quality Compliance Program."

Not all MSS Permits "reflect[] a change at a stationary source that was previously issued an Air Quality Permit with Title I conditions." Some MSS Permits are for new sources. Further, it is not true that "[e]ach MSS Permit issued to an already regulated stationary source represents an additional layer of conditions and thus compliance work that has to be conducted by the Air Quality Compliance Program." Often, MSS Permits are revised to reduce and simplify compliance requirements.

Response: *Regarding this comment, the Department agrees that the portion of MSS permits issued solely to new sources may represent no additional level of complexity for that individual source. However, for an existing source operating under a previously issued MSS, CPT, or TV permit, the existing permits must be revised to incorporate any new requirements or changed requirements of the newly issued MSS that may revise or rescind existing conditions. Compliance staff may have to adjust inspections, change compliance monitoring programs already established, or plan for on-site travel to verify emissions tests not previously included in the old permit. While it is often true that MSS permits are revised to reduce and*

simplify compliance requirements, this action would still require direct attention to the newly modified permit by permitting, compliance, and accounting staff.

- The 2021 FSR indicates that emission fees need to be increased partly due to declining emissions. It would seem that, as the objectives of a regulatory program are met—in this case, air pollutant emissions are reduced—the extent, stringency, and complexity of the regulations should likewise diminish. In practice, the opposite seems to be true with respect to air quality regulations. As the regulations succeed in reducing emissions and improving air quality, not only are legacy rules left unchanged and in place with reduced justification, but more, more complex, and more stringent rules are created that provide diminishing returns at expanding expense.

Response: *The department agrees that the commenter makes a valuable point with respect to CAA programs. For any CAA program that bases a portion of its fee collection on emissions tonnage, the simple fact is that emissions nationwide are decreasing[10]. In truth, all CAA programs attempt to work themselves out of a job. Increasing use of renewable resources like wind, solar, or hydro generation shift emissions away from those items that fees are based upon, the very source of CAA regulations. And yet the commenter is correct in stating that EPA has never said "we no longer need <u>that</u> rule, let's simplify these…" for any emission source category. Every EPA CAA rule gets revisited periodically by a cyclic-review schedule, and emission limits are tightened based upon the latest risk and technology review (RTR) that determines what more is feasible with advances in control technology.*

- The 2021 FSR lists "Methods for Stationary Sources to reduce the impact of emission fee increases by reducing their emissions." All of these suggested methods are associated with reducing emissions upon which fees are paid. This general strategy is potentially only partially effective; as the report acknowledges, decreasing emissions will require additional future fee increases. Some of the suggested impact reduction methods are infeasible in many parts of Alaska; e.g., switching from onsite electricity generation to grid power and fuel switching. Finally, technology-based requirements such as BACT and BSER (for NSPS) are designed to balance effectiveness and costs of control technologies. They intrinsically recognize that reducing emissions at any cost is generally not an appropriate policy. Administrative fees are not intended to force emissions reductions.

Response: *The department acknowledges that the commenter makes a valuable comment with several salient ideas. Certain emission reductions strategies do not work in many locations. Primarily dependent upon geography and location, switching to alternative emissions strategies does not work if they are unavailable or cost-prohibitive. Likewise, as long as Departmental task and staffing requirements remain the same, decreasing emissions tonnage equals higher emission fees for*

[10] https://www.epa.gov/airmarkets/power-plant-emission-trends

the same level of work. It is one of the central strategies being reviewed by EPA (see footnote 5). And as technology-based emissions reduction requirements such as BACT progress and mature, those costs that are deemed "economically feasible" continue to rise in step with the slow march of time.