UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, Washington 98101

December 13, 2001

Ms. Valerie Brown
Trustees for Alaska
1026 W. 4th Avenue, Suite 201
Anchorage, AK 99501

Re: Alaska's Title V Program

Dear Ms. Brown:

The purpose of this letter is to respond to your letter of March 12, 2001, submitting comments on behalf of the Cook Inlet Keeper, Alaska Community Action on Toxics, Alaska Clean Air Coalition, Alaska Center for the Environment and the Alaska Conservation Alliance, on Alaska's Clean Air Act Title V operating permits program. The comments were submitted in response to the United States Environmental Protection Agency's (EPA's) Notice of Comment Period on operating permit program deficiencies, published in the Federal Register on December 11, 2000. (65 FR 77376). Pursuant to the settlement agreement discussed in that notice, EPA is publishing notices of deficiencies for individual operating permit programs, based on the issues raised in the comments that EPA agrees are deficiencies. EPA is also responding to other concerns raised in comments that EPA does not agree are deficiencies within the meaning of 40 CFR part 70.

EPA has carefully reviewed all issues raised in your comments. With respect to the issuance of permits within the time frames required by the Clean Air Act, the State has submitted a commitment and a schedule providing for issuance of all outstanding permits by no later than December 1, 2003. The milestones contained in the State's commitment letter reflect a proportional rate of permit issuance for each semiannual period. As long as the State issues permits consistent with the semiannual milestones contained in its commitment letter, EPA will continue to consider that the Alaska Title V permitting authority has taken "significant action" such that a notice of deficiency is not warranted.

With respect to the commenters concern that ADEC's Title V fees are inadequate to cover permit program costs, ADEC will provide to EPA and the public (before March 2002) a report that will examine the cost of implementing their air permits programs and the ability of ADEC's current fee rates and structure to generate the necessary revenue. EPA plans to conduct its own analysis of the Alaska Title V fee program in the summer of 2002. If ADEC does not provide the report on fee

adequacy consistent with its announced schedule, EPA will proceed to conduct its analysis without the report. As part of the fee adequacy review, the elements considered by EPA will include: the fee schedule provided in ADEC's revised workload analysis; ADEC's commitment to complete the issuance of all their outstanding Title V permits on or before December 2003; and the number of hours required, and the number of staff needed by ADEC, to issue the permits completed up to the date of our review. Scheduling this fee review for June/July 2002 allows ADEC sufficient time to complete its fee report according to the schedule announced in the November 15, 2001, letter, so that EPA may take this information into account as part of its own analysis.

With respect to the other concerns identified by the commenters, EPA has determined that the concerns do not represent deficiencies in Alaska's Title V program within the meaning of 40 CFR part 70. The enclosed Response to Comments provides more detail on these other issues we have determined do not constitute deficiencies in Alaska's Title V program.

We appreciate your interest and efforts in ensuring that Alaska's Title V operating permits program meets all federal requirements. The public comment process is an important part of the Title V operating permits program. EPA encourages you and your clients to continue to submit comments on draft permits during the public comment process at the State level. These comments on draft permits will help the Alaska Title V permits program write better permits and assist EPA in its review of such permits.

If you have any questions regarding this letter or the enclosed Response to Comments, please contact Denise Baker at (206) 553-8087 or Adan Schwartz at (206) 553-0015.

Sincerely,

/s/

Barbara McAllister, Director
Office of Air Quality

Enclosures

cc: Michele Brown, Commissioner, ADEC
Tom Chapple, ADEC
John Kuterbach, ADEC

RESPONSE TO COMMENTS
REGARDING ALLEGED DEFICIENCIES
IN ALASKA'S TITLE V OPERATING PERMITS PROGRAM

I. BACKGROUND

A. Approval of Alaska's Title V Program In General

The Clean Air Act (CAA) requires all State and local permitting authorities to develop operating permits programs that meet the requirements of title V of the Act, 42 USC 7661-7661f, and its implementing regulations, 40 CFR part 70. Alaska's operating permits program was submitted in response to this directive. EPA granted interim approval to the Alaska Department of Environmental Conservation's (ADEC) title V air operating permits program on December 5, 1996 (61 FR 64463). After the State revised its program to address the conditions of the interim approval, EPA promulgated a final full approval notice of Alaska's title V operating permits program effective November 30, 2001 (66 FR 63184).

B. Additional Public Comment Process on Title V Programs

On December 11, 2000 (65 FR 77376), EPA published a Federal Register notice notifying the public of the opportunity to submit comments identifying any programmatic or implementation deficiencies in State title V programs that had received interim or full approval. Pursuant to the settlement agreement discussed in that notice, EPA committed to respond to the merits of any such claims of deficiency on or before December 1, 2001, for those States, such as Alaska, that have received interim approval and on or before April 1, 2002, for States that have received full approval. On March 12, 2001, EPA received comments from the Trustees for Alaska on behalf of the Cook Inlet Keeper, Alaska Community Action on Toxics, Alaska Clean Air Coalition, Alaska Center for the Environment and the Alaska Conservation Alliance (the commenters). The commenters identified numerous alleged deficiencies in Alaska's title V operating permits program. The following is EPA's response to those comments.

II. RESPONSE TO COMMENTS

Comment 1: The State Has Failed to Act on Permit Applications Submitted During the First Year of the Permit Program's Operation

EPA's date of approval, December 5, 1996, is the effective date of the State's Title V program. Since then, the State has been authorized to issue Title V air operating permits. 42 U.S.C. § 7661a(h). A review of the permit information published by EPA demonstrates that the State has not acted on a substantial percentage of the permit applications received within one year of December 5, 1996. Section 503 of the CAA required the State to act on all of the applications for permits (received

before December 5, 1997) by December 5, 1999. It is now more than a year past that deadline and the State has yet to act on most of the permit applications.

According to EPA's Title V permitting website, the State had issued only 23 percent of these permits by January 1, 2001. Only 106 of 462 pending permits have been granted. This represents the largest number of unpermitted sources in Region 10 by a large magnitude. In Alaska, there are approximately 356 facilities with pending permit applications. (By contrast there are only 61 in Idaho, the next largest number of unpermitted facilities).

The State has violated and continues to violate the CAA by failing to have issued or denied air operating permits under Title V of the CAA within three years of the program's effective date (i.e. by December 5, 1999). At current staffing levels, it will likely take the State additional decades to grant or deny all of the pending permit applications.

Comment 2: The State Has Failed to Act on Permit Applications Submitted After the First Year of the Permit Program's Operation.

The State has also violated section 503 by failing to act on permit applications submitted after December 5, 1997. The State has 12 months from the submission of these applications to either grant or deny the permits. AS 46.15.170(a)(2). While the vast majority of pending permit applications were submitted prior to December 5, 1997, there are facilities with pending permits that have not been acted on within the one-year deadline.

EPA's Response to Comments 1 and 2:

Under the CAA, the permitting authority is required to take final action on each complete permit application within 18 months, or such lesser time as approved by EPA, after receiving a complete application, except as provided in the permitting authority's transition plan for initial permit applications. In the case of initial permit applications, the permitting authority may take up to three years from the effective date of the program to take final action on the application. 42 USC 7661b(c); 40 CFR 70.4(b)(4) and 70.7(a)(2).

As noted by the commenters, the Alaska State title V air operating permits program (the State) has not met these requirements. ADEC has not acted on all initial part 70 permit applications, although more than three years have passed since December 5, 1996, the effective date of Alaska's title V program. In addition, the State has not taken final action on 15 (fifteen) later submitted permit applications within 18 months of receipt of the complete application.

EPA believes this alleged implementation deficiency merits special consideration. A number of other permitting authorities throughout the United States have also not issued permits at the rate required by the CAA. Because of the sheer number of permits that remain to be issued, EPA believes that many permitting authorities will need a period of up to two years to issue their remaining permits. If a permitting authority has submitted a commitment to issue its remaining permits on a set schedule, EPA

interprets this commitment as evidence that the permitting authority has already taken "significant action" to correct the problem and thus does not consider the failure to have issued all permits to be a deficiency at this time. To be acceptable to EPA, EPA expects that the commitment establish semiannual milestones for permit issuance, providing that the permitting authority will issue a proportional number of the outstanding permits during each six-month period leading to issuance of all outstanding permits as expeditiously as practicable, but no later than December 1, 2003.

The State has submitted a commitment and a schedule providing for issuance of all outstanding permits by no later than December 1, 2003. The milestones contained in Alaska's commitment letter reflect a proportional rate of permit issuance for each semiannual period. A copy of ADEC's commitment letter is attached. EPA will monitor the State's compliance with its commitments by performing semiannual evaluations. As long as the State issues permits consistent with the semiannual milestones contained in its commitment letter, EPA will continue to consider that ADEC's title V permits program has taken "significant action" such that a notice of deficiency is not warranted. If the State fails to meet the schedule, including any of the three milestones, EPA intends to issue an notice of deficiency.

Comment 3: The State Has Failed to Take Enforcement Action Against Facilities that are Required to Have a Permit but Have Not Yet Submitted an Application.

EPA regulations, 40 CFR § 70.7(b), forbid a part 70 source from operating after the time that it is required to submit a timely and complete application except in compliance with a permit issued under a part 70 program. Because of a lack of resources dedicated to compliance with the Title V permit program, the State has taken no action on these facilities. Shore-based fish processors and medical waste incinerators are two categories of Title V sources that have not applied for Title V permits within the required time-frames and are illegally operating. Incinerators are a significant source of dioxin, which can have serious health effects even at low levels. It is not clear how many incinerators are operating within the State, however only one, in Fairbanks, has applied for Title V permit. There are many more medical waste incinerators throughout the State.

EPA's Response to Comment 3:

EPA agrees with the commenter's general point that the failure to submit a timely application is a violation that should be addressed through enforcement. EPA believes states should be allowed some deference regarding the manner in which such violations are addressed. EPA does not rule out that a pattern of how the state responds to Title V violations might present a concern that rises to the level of a program deficiency. However, EPA does not believe such a problem exists regarding the issue raised by the commenter. The commenter has not described specific instances of non-compliance, and EPA has not uncovered any pattern of such instances. EPA is aware of one medical waste incinerator that submitted a late application. The State has informed EPA that it is addressing this situation through an enforcement response. EPA will continue to track the State's handling of this situation to ensure it is adequate.

The State's enforcement response to Title V violations is a matter of continuing oversight by EPA, and is a part of the routine exchange of information between the State and EPA. EPA is always open to receiving information from citizens regarding their views on the adequacy of the State's enforcement of Title V violations.

General Comment 4: The State has Impermissibly Broadened the Scope of the Permit Application Shield.

40 CFR 70.7(b) provides that if a part 70 source submits a timely and complete application, the source's failure to have a part 70 permit is not a violation of this part until the permitting authority takes final action on the permit application.

Comment 4A:

The State has impermissibly broadened this permit application shield. Alaska Statute 46.14.160 requires the State to make a determination whether the application is complete and notify the applicant within sixty days of receipt of an application. If the State fails to act within 60 days, the permit application is deemed complete. AS 46.14.160(b). Because the statute allows ADEC to do nothing, the public cannot discern if the applicant has in fact submitted a "complete" application and therefore is entitled to the temporary shield provided by federal law. This de facto approval of completeness permits the violation of 40 CFR § 70.7(b) forbidding the operation of a part 70 source after the time that it is required to submit a timely and complete application unless it has a permit or has a complete permit pending with.

EPA's Response to Comment 4A:

EPA understands the commenter to be objecting to both the State's legislation and the State's practice of allowing applications to be deemed complete without the State making an affirmative finding of completeness. 40 CFR § 70.5(a)(2) speaks directly to this issue and provides, in relevant part, that "[u]nless the permitting authority determines that an application is not complete within 60 days of receipt of the application, such application shall be deemed to be complete, except as otherwise provided in § 70.7(a)(4) of this part." Section 70.7(a)(4) in turn provides that:

> [t]he permitting authority shall promptly provide notice to the applicant of whether the application is complete. Unless the permitting authority requests additional information or otherwise notifies the applicant of incompleteness within 60 days of receipt of an application, the application shall be deemed complete.

Thus, while Part 70 urges permitting authorities to pay attention to applications and identify problems as soon as possible, it also provides that the failure of the permitting authority to do so will not preclude the finding of completeness to occur at the 60-day point. The Alaska Title V program, both as codified and as implemented, is consistent with this. EPA notes that, consistent with Part 70, the State has the ability to require submittal of new information from an applicant subsequent to the

application being deemed complete.

Comment 4B:

Most of the Statements of Basis (Alaska's "Legal and Factual Basis") accompanying draft permits reviewed by commenters failed to indicate whether the source was operating under the permit application shield.

EPA's Response to Comment 4B:

EPA's response to this comment follows from its previous response. Because the application shield attaches when an application is found to be or is deemed to be complete, and because completeness occurs by default 60 days after receipt of the application unless the permitting authority notifies the facility otherwise, it must be assumed that any facility that has submitted its application more than 60 days ago, and that has not been notified of incompleteness, is operating under the permit shield. EPA therefore believes the status of the application shield should be readily ascertainable from a review of the permit file for a facility.

General Comment 5: The State Fails to Include Monitoring, Record Keeping and Reporting Sufficient to Assure Compliance with and Enforcement of Each Applicable Requirement.

Section 504(a) mandates that permittees submit to the permitting authority the results of any required monitoring at least every six months. 42 U.S.C. § 7661c(a). This section also requires permits to include "such other conditions as are necessary to assure compliance with applicable requirements" of the CAA. Id. Under § 504(c), each operating permit must "set forth inspection, entry, monitoring, compliance certification, and reporting requirements to assure compliance with the permit terms and conditions." 42 U.S.C. § 7661c(c).

Where the underlying applicable requirement imposes no obligation to do periodic monitoring or testing, the permit must require periodic testing or monitoring which yields reliable data to ensure compliance with the permit. 57 Fed. Reg. 32250, 32278 (July 12, 1992). The State must do more to ensure adequate monitoring, record keeping and reporting of this data. Without the required record keeping and reporting, the data alone will not ensure compliance. See 40 CFR § 70.6(a)(3)(I)(B).

Comment 5A: No Reporting Requirements During Pendancy of Application

The State has allowed sources requiring a Title V permit to operate for years as if they are protected under the permit application shield. During this time, it imposes no minimum requirements for monitoring, record keeping, or certified reporting. Such reporting would allow the State to compare actual emissions with claims made in applications as well as provide some oversight during the delay in permit issuance. Part 70 is intended to impose uniform, reliable reporting. While the State might be precluded from enforcing emission limitations while the permit application is pending, the permit delays

do not excuse the failure to require monitoring, record keeping and certified reporting.

EPA's Response to Comment 5A:

EPA understands the commenter to be asserting that Alaska should be imposing additional monitoring, recording keeping, and reporting prior to the time of permit issuance for sources that have submitted an application for a Title V permit. The commenter does not cite specific authority supporting this assertion. While Title V specifies timelines for permit issuance, it does not require the imposition of any new monitoring, record keeping, or reporting requirements on sources during the period prior to permit issuance. The commenter therefore has not identified a program deficiency in this regard.

Comment 5B: Not All Monitoring Requirements In Title V Permits Have Mandatory Record Keeping And Certified Reporting Requirements.

The State has failed to require mandatory record keeping and certified reporting to it of some monitoring requirements. The occurrences are too numerous to cite, but almost every permit available on the State's website has at least one monitoring requirement that did not have to be reported to Alaska except "upon request." There were a few requirements that did not have to be reported at all.

The purpose of monitoring, record keeping and reporting is to ensure compliance. At a minimum, all monitoring requirements should be included in the semi-annual reports submitted to the State. 42 U.S.C. § 7661c(a). State regulations specifically allow that not all monitoring under a Title V operating permit must consist of record keeping. 18 AAC 50.350 (g)(5)(C). In practice the permits have also allowed no reporting of certain monitoring results, or reporting only "upon request" by the State.

Because the Clean Air Act gives permitted part 70 sources a permit shield from any standard not specifically found in the permit, Title V permits become the only relevant enforcement document once issued. It is essential that the permits clearly state all applicable requirements and require proper monitoring, record keeping and certified reporting. The reporting of all monitoring and record keeping is particularly important in light of the fact that, while citizen's have the right to enforce Title V permits, they do not have the authority to require more tests and information. The permit conditions must be enforceable without resorting to additional monitoring or reporting than what is required in the permit. Otherwise the permit program does not fully implement citizens' right to enforce the law. See § 304, 42 USC 7604.

EPA's Response to Comment 5B:

The commenter does not cite any specific instances of permits that fail to require sufficient record keeping or reporting. Subsequent to receiving this comment, EPA reviewed a selection of Alaska Title V permits to determine for itself whether the comment has merit. It is the case that not all monitoring in Alaska Title V permits is required to be reported. The commenter correctly observes that

some monitoring results are simply required to be submitted "upon request" by the State. However, as explained below, EPA did not find any instances where this was done inappropriately.

Regarding reporting requirements, EPA believes the commenter misunderstands the intent of Part 70. Section 70.6(a)(3)(iii)(A) requires the submittal of monitoring "reports" at least every six months. Part 70 does not require the submittal of all monitoring data. To do so would most likely overwhelm the permitting authority with information, not to mention with a sheer volume of material. Rather, the intent of Part 70 is for sources to review data required to be collected under the Part 70 permit, along with any other relevant and available data, and to summarize the results in a report. The permitting authority always has the option of obtaining the underlying data if it wishes. As far as EPA has been able to determine, Alaska's implementation of Title V has been consistent with Part 70 in this respect.

Comment 5C: The State General Permit Conditions Do No Ensure Enforceability of Fuel Burning Limits

The State's General Permit 1A for Diesel-Electric Generating Facilities is an example of permit condition that fails to ensure enforceability. Sources may qualify for GP-1A if they meet a certain annual fuel-burning limit. In fact, the permit condition allows the operator to reach the maximum fuel burning limit without time for the State to act to ensure that the source does not operate in violation of the permit condition. Condition 17 requires that the source "not use more than 825,000 gallons of fuel in any twelve consecutive months. The permittee requests this limit to restrict NOX emissions to less than 250 TPY." GP-1A, p.8. The reporting requirements for this limit include:

> 17.1 No later than the fifth day of each month:
>
> a. Record the amount of fuel oil and used oil burned at the facility in the previous month. Keep a copy of the fuel meter readings, fuel oil deliveries or other calculations used to determine the amount of fuel burned.
>
> b. Calculate and record the total amount of fuel burned in the previous eleven months. Subtract this amount from 825,000 gallons to determine the amount of fuel allowed in the current month.
>
> c. Calculate and record the total amount of fuel burned in the previous twelve months. If the facility burned more than 825,000 gallons in the previous twelve months, report this as an excess emission, exceeding the requirement of 17.

This condition should contain monitoring and reporting criteria that allows the State to ensure that the permit condition is not violated, not simply provide for reporting of the twelve-month limit. If a source cannot comply with the emissions limit of this condition it is not eligible for a general permit. The reporting requirement is insufficient to ensure that the permit is not violated and that the source is appropriately covered by the general permit.

EPA's Response to Comment 5C:

As the commenter notes, this fuel burning limit functions as an eligibility limit for the Title V general permit for diesel generators. Sources burning more than the specified amount of fuel in the preceding 12 months would need to apply for an individual permit rather than operating under authorization of the general permit. The 12-month period is a "rolling" period, in the sense that fuel use must be below the specified amount for every consecutive 12-month period. As such, the limit is not an emissions limit implementing any specific federal requirement, such as a SIP or a promulgated federal emissions standard. Rather, it merely serves to draw the line between sources that are judged small enough to be permitted through the general permitting mechanism, and those that are so large they should be looked at individually before receiving a permit. Sources are free to use more fuel than that specified in this limit. However, doing so would mean they must apply for and obtain an individual Title V permit.

EPA worked with Alaska in developing this general permit. In EPA's view, the size cutoff for eligibility for the diesel generator general permit is appropriate. Moreover, EPA believes the cutoff is expressed in terms that are sufficiently verifiable and enforceable. EPA did not review the fuel usage limit as if it were a federally enforceable emissions limit that assures compliance with an applicable requirement. Had it done so, EPA may have reached a different conclusion regarding whether the limit is sufficiently enforceable. Since the fuel usage limit is not a federally enforceable emissions limit that assures compliance with an applicable requirement, that question need not be addressed here. As a limit on eligibility for the general permit, EPA believes it sufficient that sources are required to keep records of fuel use and to calculate fuel use on a 12-month rolling basis.

General Comment 6: The State Exempts Some Emissions From A Source From The Classification Determination.

Comment 6A: Nonroad Engines

When calculating the amount of emissions from a specific source, the State exempts all nonroad engine emissions from the calculation. 18 AAC 50.100. While emissions from nonroad engines may be exempt from regulation, there is no basis for exempting a potentially significant source of emissions from the calculation of whether a facility meets the Title V permitting threshold.

EPA's Response to Comment 6A:

EPA believes the State's practice of not including emissions from nonroad engines when calculating the amount of emissions from a source is appropriate and consistent with Clean Air Act laws and regulations, for two reasons. First, Part 70 requires the determination of whether a source is "major" to be based on the totaling of emission from "any stationary source (or any group of stationary sources . . .). See 40 CFR § 70.2 definition of "Major source." Most nonroad engines, such as railroad locomotives, are not stationary sources. Moreover, Section 302(z) of the Clean Air Act defines the term "stationary source" to mean "any source of air pollution except those emissions resulting directly from an internal combustion engine for transportation purposes or from a nonroad engine or nonroad vehicle as defined in [Clean Air Act Section 216]."

Second, 40 CFR Subpart Q, at Section 85.1603(d) provides that, "[n]o state . . . shall enforce any standards or other requirements related to the control of emissions from nonroad engines or vehicles except as provided for [in Subpart Q]." Thus States are generally precluded from regulating emissions from nonroad engines. Since Title V permits must be enforceable by the State, it would not make sense to base the applicability of the Title V program on the presense of emissions the State has no authority to regulate.

Comment 6B: Oil and Gas Production or Exploration Wells

Facilities that require operating permits are defined in § 502, 42 USC § 7661a and AS 46.14.130. The State's regulations, 18 AAC 50.325(b)(2), implement these definitions, providing that "emissions from an oil or gas production or exploration well with its associated equipment and emissions from a pipeline compressor or pump station may not be aggregated with emissions from another similar unit." This exemption has no basis in the CAA. If such a facility meets the emission requirements or other definitions of facilities requiring a permit, then it must have a Title V operating permit.

EPA's Response to Comment 6B:

The State provision for not aggregating oil and gas wells with associated equipment or pump compressor stations is consistent with Section 112(n)(4)(A) of the Clean Air Act, which provides, in relevant part:

> . . . emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources . . .

This statutory language is reiterated in the Part 70 definition of "Major Source." Alaska's approach to non-aggregation of oil and gas drilling equipment is therefore consistent with the Clean Air Act and implementing regulations.

General Comment 7: The State Fees Are Inadequate To Cover Permit Program Costs.

Federal regulations, 40 CFR § 70.0(a), require that the State require the owners or operators of part 70 sources to pay fees that are sufficient to cover the permit program costs. The partial list of what these fees must be adequate to cover includes: (1) development of regulations and guidance; (2) reviewing and acting on permit applications; (3) administrative costs from supporting and tracking applications and compliance certification; (4) enforcing the terms of permits; and (5) emission and ambient monitoring.

Comment 7A:

The fees charged in the State of Alaska are not adequate to cover these program costs. This is evident from the backlog in permitting as well as the lack of compliance and enforcement staff. The State of Alaska has only three people doing compliance reviews and inspections for over 400 facilities.

EPA's Response to Comment 7A:

EPA is not concluding at this time that Alaska's title V fee program is deficient. However, EPA has resolved to investigate this issue more thoroughly. The commenter argues that the rate of permit issuance by Alaska and the ratio of enforcement personel to permitted facilities is, by itself, sufficient proof that the State's fee program is inadequate. In response, EPA notes, first, that it has not been shown that Alaska's staffing is inadequate to handle the tasks of issuing permits in a timely manner or ensuring compliance with issued permits. Second, even if a shortage of staff were identified, it would not automatically follow that such a shortage results from inadequate funding. In short, EPA believes the commenter has identified issues that merit careful investigation, and EPA intends to pursue such an investigation. However, the commenter has not provided a basis for concluding at this time that the State's fee program is inadequate.

As part of ADEC's title V program approval package, ADEC submitted a workload analysis to EPA showing that their current fee structure was sufficient to support their title V program. The $5.07 per ton rate charges on actual emissions, and an hourly permit processing fee of $78 in this August 1995 analysis, were based on all the title V permits being issued within four years of program approval. (ADEC's workload projection for issuance of title V permits included all new applications received the first year, and all new applications received after initial submittals.)

Regarding the permit issuance rate, EPA is concerned about the rate of permit issuance in Alaska, and is attempting to determine the cause. It would be premature at this time to conclude that the permit issuance rate is solely, or even primarily, a result of the level of funding. For instance, it is quite possible that Alaska has adequate funding available, but has chosen to use those funds in a way that does not promote timely issuance of permits. It is also possible that the rate of permit issuance by Alaska is not determined by staffing levels. Without further investigation, EPA has no way of reaching a firm conclusion in this regard.

EPA and ADEC have discussed the adequacy State's title V fee program. ADEC has indicated to EPA that it is examining whether fees are adequate to support the title V program, and that it plans to prepare a report on title V fees and workload. ADEC has stated in a letter to EPA dated November 15, 2001, (a copy of which is attached) that this report "will examine the cost of implementing our air permits programs and the ability of our current fee rates and structure to generate the necessary revenue. We will complete this report and make it available to [EPA] and the public sometime before March 2002. The report will cover . . . Title V costs, and revenue, and the data presented will enable you to draw a more correct conclusion regarding the adequacy of Alaska's title V fees."

EPA plans to conduct its own analysis of the AK title V fee program in the summer of 2002. Scheduling this fee review for June/July 2002 allows ADEC sufficient time to complete its fee report according to the schedule announced in the November 15, 2001, letter, so that EPA may take this information into account as part of its own analysis. If ADEC does not provide the report on fee adequacy consistent with its announced schedule, EPA will proceed to conduct its analysis without the report. As part of the fee adequacy review, the elements considered by EPA will include: the fee schedule provided in ADEC's revised workload analysis; ADEC's commitment to complete the issuance of all their outstanding title V permits on or before December 2003; and the number of hours required, and the number of staff needed by ADEC, to issue the permits completed up to the date of our review.

Regarding the commenter's assertion that three is an inadequate number of people to staff enforcement of the title V program, EPA begins by noting that some, but not all, costs of enforcing title V permits must be covered by title V fees. However, EPA believes the reasoning offered by the commenter is insufficient to support a conclusion regarding the adequacy of Alaska's enforcement program. Staffing levels may, in some cases, be an indicator of adequacy for an enforcement program. Of greater importance is information that bears directly on whether compliance is being adequately promoted at permitted facilities, i.e., whether the enforcement program yields satisfactory results. The commenter has not provided direct evidence in this regard. EPA will consider any available information regarding the adequacy of the State's title V enforcement program, as well as the relationship of that information to staffing, as part of its review of title V fee adequacy. EPA regularly tracks the effectiveness of the title V enforcement program in Alaska, and therefore has information upon with to draw in this regard. EPA does not anticipate conducting any additional audit of the Alaska title V enforcement program as part of its review of fee adequacy. This may change if EPA has reason to believe that the State's enforcement program is operating ineffectively.

Comment 7B:

The State's implementation of the Title V program has failed to assess civil penalties for Title V permit violations. See 40 CFR § 70.11(a)(3). Although the State appears to have the authority under AS 46.03.760, it has not prosecuted permit violations under this provision. To fully implement the Title V program, the State should have the ability to impose administrative penalties.

EPA's Response to Comment 7B:

As this issue was raised in the context of questioning the adequacy of fees collected by Alaska, we will respond here regarding ADEC's ability to assess civil penalties for title V permit violations that could be used to support their title V program.

40 CFR Part 70.9(b)(iv) states that title V fees may be used for "[i]mplementing and enforcing the terms of any part 70 permit (not including any court cost or other costs associate with an enforcement action)..." EPA's August 4, 1993 Memo titled: "Reissuance of Guidance on Agency Review of State Fee Schedules for Operating Permits Programs Under Title V," page 2, states that: "This approach is based on legislative history which indicates that Congress viewed the filing of

complaints as the beginning of enforcement actions for purposes of the statutory provision [Section 502(b)(3)(A)(ii) of the Clean Air Act] that excludes "court costs or other cost associated with any enforcement action" from the cost to be recovered through permit fees. Therefore, any civil penalties assessed for title V permit violations would not increase title V fee revenues, and could not be used to support title V activities in the State. EPA believes this does not constitute a deficiency in the Alaska program.

Moreover, EPA notes that, although Section 70.11(a)(3)(i) requires an approved state to have authority to collect civil penalties, there is no requirement for the state to have administrative penalty authority. Although EPA believes administrative penalty authority is a useful tool for promoting compliance, adequate judicial penalty authority is all that is required to meeting Section 70.11(a)(3)(i).

Comment 8: The State Regulations Do Not Require Alaska To Refrain From Issuing Permit Where EPA Objects After 45 Day Permit Process.

Federal regulations, 40 CFR § 70.8(d), require a 60-day public petition process following the EPA's initial 45-day permit review period. If the EPA objects to a permit as a result of a petition, the State may not issue the permit until EPA's objection has been resolved. If the permit has already been issued, then EPA must modify, terminate, or revoke the permit. Thereafter, the State may only issue a revised permit that satisfies EPA's objection. Id.

AS 46.14.220(b) and 18 AAC 50.340 implement the 45-day EPA permit review period, but fail to implement the restrictions that are contained in the public petition provisions.

EPA's Response to Comment 8:

The commenter is correct that the Alaska Code and regulations do not address procedures for citizens to petition EPA to object. EPA believes this does not constitute a deficiency in the Alaska program. The procedure for petitioning EPA to object is essentially an EPA procedure. Addressing this procedure in the Alaska code or regulations would not give citizens the right to petition if, hypothetically, that right were not provided in EPA's own authorities. Conversely, the absence of provisions addressing petitions to EPA in the Alaska code and regulations does not take away citizens' rights to petition. While it might be helpful and informative for Alaska to address petitions to EPA in its code or rules, the absence of such provisions does not constitute a program deficiency.

Although to date there have been no petitions from citizens in Alaska, EPA has no reason to believe that the petition process would be encounter legal impediments due to any provision of Alaska law. As provided for in 40 CFR § 70.8(d), if a Title V permit were to issue prior to an EPA objection that is responsive to a citizen petition, EPA would follow the procedures in Section 70.7(g) by giving the State an opportunity to resolve EPA's objection and, if the State did not, EPA would follow appropriate procedures to issue a federal permit to the source.

III. Conclusion

EPA has thoroughly reviewed all issues raised by the commenters. With respect to the issuance of permits within the time frames required by the Clean Air Act, the State has submitted a commitment and a schedule providing for issuance of all outstanding permits by no later than December 1, 2003. The milestones contained in the State's commitment letter reflect a proportional rate of permit issuance for each semiannual period. As long as the State issues permits consistent with the semiannual milestones contained in its commitment letter, EPA will continue to consider that the Alaska title V permitting authority has taken "significant action" such that a notice of deficiency is not warranted.

With respect to the commenters concern that ADEC's title V fees are inadequate to cover permit program costs, ADEC will provide to EPA and the public (before March 2002) a report that will examine the cost of implementing their air permits programs and the ability of ADEC's current fee rates and structure to generate the necessary revenue. EPA plans to conduct its own analysis of the AK title V fee program in the summer of 2002. If ADEC does not provide the report on fee adequacy consistent with its announced schedule, EPA will proceed to conduct its analysis without the report. As part of the fee adequacy review, the elements considered by EPA will include: the fee schedule provided in ADEC's revised workload analysis; ADEC's commitment to complete the issuance of all their outstanding title V permits on or before December 2003; and the number of hours required, and the number of staff needed by ADEC, to issue the permits completed up to the date of our review.

Scheduling this fee review for June/July 2002 allows ADEC sufficient time to complete its fee report according to the schedule announced in the November 15, 2001, letter, so that EPA may take this information into account as part of its own analysis.

With respect to the other concerns identified by the commenters, EPA has determined that the concerns do not represent deficiencies in Alaska's title V program.