MEMORANDUM

State of Alaska
Department of Law

TO: The Honorable Michele Brown, Commissioner
Department of Environmental Conservation

DATE: May 18, 1998

FILE NO.: 663-98-0203

TELEPHONE NO.: 465-3600

SUBJECT: Title V Program Approval: Inspection and Entry Requirements

FROM: Steven A. Daugherty
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Natural Resources Section

You requested advice regarding whether the inspection and entry requirements of Alaska's Title V Program meet the requirements of 40 C.F.R. Part 70. The Environmental Protection Agency (EPA), in its final interim approval for the operating permits program stated, "[a]s a condition of full approval, Alaska must demonstrate to EPA's satisfaction that its inspection and entry authority meets the requirements of 40 C.F.R. 70.6(c)(2) and imposes no greater restrictions on the State's inspection authority than exist under federal law." 61 Fed. Reg. 64463, 64472 (1996). We have examined the relevant state and federal regulations, the permit conditions required by state regulations, and state and federal case law. Based on this review we conclude that despite the fact that the Alaska Constitution contains a broader guarantee against unreasonable search and seizure than the United States Constitution, *Woods and Rohde, Inc. v. State, Department of Labor*, 565 P.2d 138, 150 (Alaska 1977), facilities with an operating permit issued under AS 46.14 are closely regulated with little reasonable expectation of privacy and thus the restrictions on the State's inspection authority are no greater than under federal law. *See, e.g., Nathanson v. State*, 554 P.2d 456, 458-59 (Alaska 1976).

I. BACKGROUND STATUTORY AND REGULATORY PROVISIONS

Federal requirements for inspection and entry are found at 42 U.S.C. § 7414 and 40 C.F.R. § 70.6. The Clean Air Act (CAA), 42 U.S.C.S. 7401─7671q (1997), provides:

> [T]he administrator or his authorized representative, upon presentation of his credentials--

> (A) shall have a right of entry to, upon, or through any premise of such person or in which any records required to be maintained under paragraph (1) of this section are located, and
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> (B) may at reasonable times have access to and copy any records, inspect any monitoring equipment or method required under paragraph (1), and sample any emissions which such person is required to sample under paragraph (1).

42 U.S.C.S. § 7414(a)(2) (1997). The regulations provide that all 40 C.F.R. Part 70 permits are to contain "[i]nspection and entry requirements that require that upon presentation of credentials and other documents as may be required by law, the permittee shall allow the permitting authority or an authorized representative" to perform specified entry, inspection, copying, and sampling functions. 40 C.F.R. § 70.6(c)(2) (1997).

Under the Alaska operating permit program, inspection and entry requirements derive from statute, regulation, and permit terms. Under AS 46.14.515(a), "[a]n officer or employee of the department designated by the commissioner or an inspector authorized by the commissioner and certified under regulations adopted under AS 46.14.140(a)(13) may, upon presentation of credentials and at reasonable times with the consent of the owner or operator, enter upon or through any premises of a facility regulated under this chapter" for specified inspection, copying, and sampling functions. Under authority of AS 46.14.140(a)(4)(C), the Alaska Department of Environmental Conservation (ADEC) has adopted a regulation establishing a standard permit condition relating to inspection and entry:

> [T]he permittee shall allow an officer or employee of the department or an inspector authorized by the department, upon presentation of credentials and at reasonable times with the consent of the owner or operator, to
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> (A) enter upon the premises where a source subject to the operating permit is located or where records required by the permit are kept;
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> (B) have access to and copy any records required by the permit;
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> (C) inspect any facilities, equipment, practices, or operations regulated by or referenced in the permit; and
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> (D) sample or monitor substances or parameters to assure compliance with the permit or other applicable requirements.

18 AAC 50.345(c)(7). This standard provision, requiring the permittee to consent to entry and inspection for specified purposes will be contained in all operating permits.

Failure to consent to entry and inspection, at reasonable times, as required by the standard permit condition is subject to the assessment of civil penalties under AS 46.03.760(e) and criminal penalties under AS 46.03.790.

If consent for entry and inspection is denied, a warrant can be obtained under AS 46.03.860, which provides: "The department may seek search warrants for the purpose of investigating actual or suspected sources of pollution or contamination or to ascertain compliance or noncompliance with AS 46.14 or this chapter or a regulation adopted under AS 46.14 or this chapter." AS 46.03.860.

II. EPA'S CONCERNS

Alaska's statutory and regulatory language for its operating permit program do not mirror the language used in federal regulations; however, Alaska's requirements are consistent with EPA's long-standing enforcement policies. *See* 61 Fed. Reg. 64469 (1996); EPA, Air Compliance Inspection Manual 3-9 to 3-12 (EPA-340/1-85-020) (September 1985). EPA's concerns stem from the position that while nonconsensual searches generally require a warrant under federal law, *see Marshall v. Barlow's, Inc.*, 436 U.S. 307 (1978), statutes and regulations allowing warrantless searches in pervasively regulated industries, where there is no reasonable expectation of privacy, are permissible under federal law. *See, e.g., id.* at 313; *New York v. Burger*, 482 U.S. 691, 701-10 (1986); *United States v. V-1 Oil Co.*, 63 F.3d 909, 911--13 (9th Cir. 1995) *cert. denied* 134 L.Ed.2d 929 (1996). The Clean Air Act requires owners and operators of regulated facilities to allow entry and inspection but does not provide clear guidance regarding whether warrantless entry is authorized where an owner or operator refuses to allow entry and inspection. *See* 42 U.S.C.S § 7414 (1997). EPA routinely obtains warrants for nonconsensual searches under the CAA, *see, e.g.*, EPA, Air Compliance Inspection Manual 3-11 (EPA-340/1-85-020) (September 1985), and has not availed itself of opportunities in litigation to raise the issue of whether the CAA authorizes nonconsensual warrantless searches, see, e.g., *Dow Chemical Co. v. United States*, 476 U.S. 227, 246 (1985). Nonetheless, EPA appears concerned that the CAA may authorize warrantless nonconsensual searches and that such searches might not be possible under Alaska's program. *See* 61 Fed. Reg. 64463, 64469.

EPA has also expressed concern that Alaska's consent requirement might constrain the application of federally recognized exceptions to warrant requirements.

Specifically, EPA expressed concern that the "open fields" and "plain view" doctrines might be inapplicable under Alaska's program, and that warrantless searches might not be permissible where there is an emergency such as a potential imminent hazard or potential destruction of evidence. *See* 61 Fed. Reg. 64463, 64469.

III. DISCUSSION

A. The General Requirements for Nonconsensual Searches under the Alaska Operating Permit Program Are No More Restrictive Than the Federal Requirements.

1. Under the Alaska program, operating permit holders have no "reasonable expectation of privacy" as to regulated subject matter and thus the Alaska operating permit program warrantless search requirements are permissible.

Alaska has adopted a two-part test for determination of the applicability of Fourth Amendment protections. Under this test, in order for Fourth Amendment protections to be applicable, (1) a person must have: an actual (subjective) expectation of privacy, and (2) the expectation must be one that society is prepared to recognize as reasonable. *Woods & Rohde, Inc. v. State*, 565 P.2d 138, 149 (Alaska 1977). Where, as in a closely regulated industry that is subject to inspection, there can be no reasonable subjective expectation of privacy, there is no protectable Fourth Amendment interest to be implicated by a warrantless search. *See id.* at 149-50; *Nathanson v. State*, 554 P.2d 456, 459 (Alaska 1976); *see also* 1981 Inf. Op. Att'y Gen. 1-2 (June 22; J-66-842-81) (indicating that pervasive regulation would eliminate any reasonable expectation of privacy); 1982 Inf. Op. Att'y Gen. 1 (July 7; 366-007-83) (in pervasively regulated industry, inspections without warrants permissible when conducted according to a regular plan providing guidelines for inspections).

A person or entity subject to the Alaska operating permit program cannot have a reasonable expectation of privacy with regard to premises containing sources, records, equipment, or regulated operations. Facilities subject to operating permit requirements are pervasively regulated; they are required to submit detailed applications containing information about sources at the facility and standards to which those sources are subject; permits include terms and conditions including source operational or emission controls and monitoring, reporting, and record keeping requirements; permit holders are required to submit compliance certifications on an annual or more frequent basis; facility changes are restricted by regulation; and records must be maintained for facility changes even if the

change does not violate any permit condition. *See* 5 AAC 50.335–50.365. By statute, these facilities are subject to inspection, at reasonable times with the consent of the owner or operator. *See* AS 46.14.515. Further, regulations require each permit to contain a provision stating:

> [T]he permittee **shall allow** an officer or employee of the department or an inspector authorized by the department, upon presentation of credentials and at reasonable times with the consent of the owner or operator, to
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> (A) enter upon the premises where a source subject to the operating permit is located or where records required by the permit are kept;
>
> (B) have access to and copy any records required by the permit;
>
> (C) inspect any facilities, equipment, practices, or operations regulated by or referenced in the permit; and
>
> (D) sample or monitor substances or parameters to assure compliance with the permit or other applicable requirements.

18 AAC 50.345(c)(7) (emphasis added). Thus, under the regulations and the terms of an operating permit, a permittee is required to consent to entry and inspection. Failure to consent at a reasonable time is a violation of a permit condition subject to potential civil and criminal penalties. *See* AS 46.03.760(e), 46.03.790. Thus there can be no reasonable expectation of privacy as to matters subject to entry and inspection under the operating permit program. These provisions authorizing warrantless searches are permissible under the Alaska Constitution because facilities subject to the operating permit requirement have no reasonable expectation of privacy.

2. If consent to entry and inspection is denied, a warrant can be easily obtained because administrative searches in Alaska require the same "attenuated probable cause" that applies under federal law.

For administrative searches, the Alaska Supreme Court has adopted the "attenuated probable cause" standard expressed by the U. S. Supreme Court in *Camera v. Municipal Court*, 387 U.S. 523, 534-39 (1966). *Woods and Rohde, Inc. v. State*, 565 P.2d 138, 151 (Alaska 1977). Under this standard "probable cause" to issue an inspection warrant exists "if reasonable legislative or administrative standards" for conducting an inspection are satisfied. *Camera*, 387 U.S. at 538. Under this standard, "[t]here need be no probable cause to suppose a violation to support a warrant to inspect. All that is required is a showing that

reasonable administrative standards for inspection have been established and are met in the inspection in question." *Woods and Rohde, Inc.*, 565 P.2d at 152 n.69, *citing United States v. Thriftmart, Inc.*, 429 F.2d 1006, 1008-09 (9th Cir. 1970) *cert. denied* 400 U.S. 926 (1970). Thus warrants should be easily obtained for routine inspections where consent to entry is withheld.[1]

3. Under the federal CAA program, nonconsensual searches will generally require a warrant or an injunction.

The CAA provides a right of entry for inspection and copying, 42 U.S.C. § 414, however, there is nothing in the CAA explicitly authorizing warrantless entry where a facility refuses to consent to the right of entry. *See id.* Federal regulations also fail to explicitly authorize warrantless entry where consent is denied and, in fact, by requiring presentation of credentials and "other documents as may be required by law," imply that a warrant may be required. *See* 40 C.F.R. § 70.6(c)(2)(1997). While it is clear that under federal law, as under state law,[2] provisions authorizing warrantless administrative searches of pervasively regulated industries are permissible, *see, e.g., New York v. Burger*, 482 U.S. 691, 702-03 (1986), where a right of entry is denied it generally appears necessary to seek a warrant or injunctive relief. *See, e.g.*, 42 U.S.C.S. § 7413(b)(2) (1997) (authorizing pursuit of civil penalties and injunctive relief for violation of subchapter I of the CAA); *Bunker Hill Co. Lead and Zinc Smelter v. United States Environmental Protection Agency (In re Clean Air Act Administrative Inspection)*, 658 F.2d 1280 (1981) (warrant obtained to allow EPA contractor to conduct inspection where entry denied); *Public Service Co. of Indiana, Inc. v. United States Environmental Protection Agency*, 509 F. Supp. 720, 722 (1981) (warrant obtained for nonconsensual entry). Warrants or injunctive relief are also used under other

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[1] As under federal law, where an inspection is not a routine inspection under reasonable legislative or administrative standards, specific evidence of an existing violation or evidence supporting a reasonable belief or suspicion of a violation may be necessary in order to support the balancing test for attenuated probable cause. *See, e.g. Marshall v. Barlow's, Inc.*, 436 U.S. 307, 320 (1977); *Reich v. Kelly-Springfield Tire Co. (In re Kelly-Springfield Tire Co.)*, 13 F.3d 1160, 1166 (7th Cir. 1994). Further, if the purpose of an investigation is to gather evidence for a criminal prosecution (as opposed a civil investigation that could incidently lead to criminal as well as civil enforcement), a criminal search warrant based on full probable cause should be obtained. *See, e.g., Alexander v. San Francisco*, 29 F.3d 1355, 1360-61 (9th Cir. 1994) *cert. denied* 513 U.S. 1083 (1995).

[2] *See, e.g. Woods & Rohde, Inc. v. State*, 565 P.2d 138, 150 (Alaska 1977).

federal statutes where a right of entry is denied, even where there is a clear congressional intent to provide for surprise inspections. *See, e.g., Donovan v. Dewey*, 452 U.S. 594, 596-97 (1980) (civil action for injunctive relief authorized where a mine operator fails to allow a warrantless inspection under the Federal Mine Safety and Health Act); *United States v. V-1 Oil Co.*, 63 F.3d 909, 911 (9th Cir. 1995) (injunction obtained to enjoin prevention of inspections under the Hazardous Materials Transportation Act); *see also Lesser v. Espy*, 34 F.2d 1301 (7th Cir. 1994) (where consensual entry was denied for search under the Animal Welfare Act, no inspection was conducted, instead penalties for failure to allow inspection were sought).

It is EPA's long-standing policy to seek consent prior to entering and inspecting a facility, and to obtain a warrant where consent to entry is denied. 61 Fed. Reg. 64463, 64469 (1996). There are situations in which this policy would not apply, such as where there is an emergency presenting an imminent hazard or where destruction of evidence is a concern. *Id.* This policy would also not apply where no Fourth Amendment "search" is necessary, as where evidence is in "plain view" or "open fields." *Id.* As shown below, Alaska recognizes exceptions to the warrant requirement that should coincide with these exceptions to EPA policy. However, in most situations, under either Alaska or federal law, even in pervasively regulated industries, if consensual entry is denied, it is generally necessary to seek a warrant or injunction to allow inspection. An EPA inspector who is denied entry for a routine inspection would not force entry, but instead, in order to assure that any evidence will be admissible, the inspector would seek a warrant or injunction just as one of Alaska's inspectors would.[3]

B. Alaska's Consent Requirements Do Not Constrain Traditional Exceptions to Warrant Requirements, and These Exceptions Are Recognized in Alaska.

The provisions of AS 46.14.515, authorizing entry and inspection "upon presentation of credentials at reasonable times with the consent of the owner or operator," merely restate ADEC's long-standing authority to conduct warrantless inspections, *see* sec. 3, ch. 120, SLA 1971, and make it clear that this authority exists under AS 46.14. While AS 46.14.515(a)(1)-(3) does provide a narrower subject matter for inspection than is

[3] Nonconsensual inspections that are not conducted pursuant to a court order would likely result in litigation over trespass and suppression of evidence. Such searches might also result an unreasonable risk of injury for inspectors.

generally available under AS 46.03.020(6), the general requirements for entry essentially mirror those of AS 46.03.020(6); these provisions do not constrain traditional exceptions to warrant requirements. The original statutes creating ADEC granted authority for entry and inspection "with the consent of the owner or occupier," to allow the department to enforce its regulations. *See* sec. 3, ch. 120, SLA 197; AS 46.03.020(6). This enabling legislation also authorized ADEC to seek search warrants to inspect actual or suspected sources of pollution or contamination or to ascertain compliance or noncompliance with AS 46.03 and ADEC regulations. *See* sec. 3, ch. 120, SLA 1971; AS 46.03.860. It is clear that the entry and inspection provisions of this enabling legislation were intended as a grant of additional authority to the new department, not as a restraint on traditional exceptions to warrant requirements. An interpretation of the provisions of AS 46.03.020(6) as foreclosing use of traditional exceptions to the warrant requirement would be inconsistent with the obvious attempt by the legislature to grant the new department the power to carry out its statutory responsibilities. *Cf. Mackelwich v. State*, 950 P.2d 152, 157-58 (Alaska App. 1997) (holding that a notice requirement in a statute authorizing warrantless searches for fish and game enforcement is applicable only to searches that do not fall within a recognized exception to the warrant requirement).

Although warrantless searches are generally *per se* unreasonable under the constitutions of the United States and Alaska, *see Woods & Rohde, Inc., v. State*, 565 P.2d 138, 149 (Alaska 1977), *citing Katz v. United States*, 389 U.S. 347, 357 (1967), Alaska, like the federal government, recognizes that warrantless searches are permissible when they fall within "specifically established and well-delineated exceptions" to warrant requirements. *See, e.g., Woods & Rohde, Inc.,* 565 P.2d at 149.

1. The "open fields" exception to warrant requirements would almost certainly be recognized under Alaska law.

Under federal law, the "open fields" doctrine is a long-established exception to the warrant requirement under which a warrant is not needed to conduct a search of land outside the curtilage of a home. *See Hester v. United States*, 265 U.S. 57, 59 (1924); *Oliver v. United States*, 466 U.S. 170, 180 (1984). The Alaska Supreme Court has not explicitly considered the applicability of the "open fields" doctrine in Alaska, and there are some differences between the federal and state search and seizure provisions.[4] However, Alaska's

[4] The Alaska search and seizure provision includes the term "other property," while the federal provision is limited to "persons, houses, papers, and effects." *Compare* Alaska Const. art 1, § 14 and U.S. Const. amend. IV.

courts would almost certainly recognize the long-standing "open fields" doctrine as a "specifically established and well-delineated exception" to warrant requirements. We have previously advised state environmental agencies of the availability of the "open fields" exception to the warrant requirement. *See, e.g.*, 1982 Inf. Op. Att'y Gen. 1 (July 7; 366-007-83) (indicating ADEC could engage in warrantless oil field inspections under the "open fields doctrine); 1984 Inf. Op. Att'y Gen. 6-8 (May 1; 166-346-83) (indicating Fish & Game officers could conduct warrantless inspections pursuant to the "open fields" doctrine on lands outside of immediate dwelling areas "where there is no reasonable expectation of privacy that society recognizes.").

In *Oliver*, 466 U.S. at 176-184, the U.S. Supreme Court addressed the question of whether there is a reasonable expectation of privacy that society is prepared to recognize in open fields and concluded that there is not. This analysis was based in part on the fact that fences and no trespassing signs in rural areas are not effective in barring public access and the fact that the public and police may lawfully survey lands from the air. *Id.* at 179. This is the same analysis that would be applicable under the Alaska Supreme Court's criteria as outlined in *Woods & Rohde, Inc.*, 565 P.2d at 149. Where there is no expectation of privacy that society is prepared to recognize as reasonable, constitutional limitations on search and seizure are not implicated. *See id.* Thus, under the same analysis used in *Oliver*, the "open fields" doctrine should be available under Alaska law, and we believe that Alaska's inspectors will not be more restricted than federal inspectors in this regard.[5]

2. Alaska recognizes the "plain view" exception to warrant requirements.

The Alaska Supreme Court has clearly recognized the applicability of the "plain view" doctrine. *See, e.g., Reeves v. State*, 599 P.2d 727, 738 (Alaska 1979). Under this doctrine, observations made by an officer are admissible if the officer is legally in the position from which the observations were made, and the warrantless seizure of evidence observed in plain view may also be permissible. *Id.; Deal v. State*, 626 P.2d 1073, 1078 (Alaska 1980). The Alaska Supreme Court has recognized three basic requirements for the

[5] As shown below, the Alaska Supreme Court has already recognized the applicability of the "plain view" doctrine, *Deal v. State*, 626 P.2d 1073, 1078 (Alaska 1980), and has also recognized that officers may legitimately make observations from areas that are expressly or impliedly open to the public. *See Pistro v. State*, 590 P.2d 884, 886-87 (Alaska 1979). Therefore, a clear acknowledgment of the applicability of the "open fields" doctrine would add little other than the ability to use information gathered while trespassing in open fields.

a valid "plain view" seizure of evidence: (1) the initial intrusion which afforded the view must have been lawful; (2) the discovery of the evidence must have been inadvertent; and (3) the incriminating nature of the evidence must have been immediately apparent. *Deal* at 1078-79. These requirements were based on *Coolidge v. New Hampshire*, 403 U.S. 443, 466 (1971). *Id.*; *Reeves*, 599 P.2d at 738 n. 32. In 1990, the U. S. Supreme Court reexamined the plain view doctrine as discussed in *Coolidge*, and held that inadvertence is not required. *Horton v. California* 496 U.S. 128, 136-42 (1990). Although Alaska's appellate court has recognized that the previous requirements for a plain view seizure may no longer be fully applicable, *see Newhall v. State*, 843 P.2d 1254, 1257 (Alaska App. 1992), the Alaska courts have not yet had occasion to readdress the issue of whether inadvertence is required in the wake of the *Horton* decision. However, since Alaska's previously stated requirements for plain view seizures were based on following *Coolidge*, Alaska can be expected to follow *Horton* and drop the inadvertence requirement. Thus, we do not believe that Alaska's application of the "plain view" doctrine will impose restrictions on inspection authority beyond those that exist under federal law.

3. Alaska recognizes warrant exceptions for exigent circumstances.

Alaska recognizes exceptions to warrant requirements where there are exigent circumstances such as where there is a danger that evidence will be destroyed or removed before a warrant can be obtained. Under federal law,

> [E]xigent circumstances are present when 'a reasonable person [would] believe that entry . . . was necessary to prevent physical harm to the officers or other persons, the destruction of relevant evidence, the escape of the suspect, or some other consequences improperly frustrating legitimate law enforcement efforts.'

U.S. v. Gooch, 6 F.3d 673, 679 (9th Cir. 1993) (alteration in original) (citations omitted). "The exigencies must be viewed from the totality of circumstances known to the officers at the time of the warrantless intrusion" *U.S. v. George*, 883 F.2d 1407, 1412 (9th Cir. 1989) (citations omitted), and the government must show that there was insufficient time to obtain a warrant. Similar exceptions with similar criteria are available under Alaska law. Alaska has recognized that "[e]xigent circumstances justifying a warrantless search or seizure may be established by the existence of probable cause, coupled with a 'compelling need for official action and no time to secure a warrant.'" *Ingram v. State*, 703 P.2d 415, 422 (Alaska

App. 1985) *quoting Michigan v. Tyler*, 436 U.S. 499, 509 (1978).[6] The presence of exigent circumstances is determined by examining the "totality of circumstances of the case, balancing the nature of the exigency against the degree of intrusiveness of the warrantless search or seizure." *Ingram*, 703 P.2d at 422 (citations omitted). Factors for finding exigent circumstances include such things as the likelihood of destruction of evidence, likelihood of warning other suspects, and the need for police officers to assure personal safety. *See id.* at 423.

More specific guidelines have been outlined for an exigent circumstance search and seizure when destruction of evidence is threatened: "[t]here must be probable cause to believe that evidence is present, and the officers must reasonably conclude, from the surrounding circumstances and the information at hand, that the evidence will be destroyed or removed before a search warrant can be obtained." *Finch v. State*, 592 P.2d 1196, 1198 (Alaska 1979). These guidelines are consistent with federal requirements. *See, e.g., United States v. George*, 883 F.2d 14077, 1412-1415 (holding entry and arrest of bank robbery suspect was not excused by exigent circumstances where there was no indication that the suspect was aware of imminent capture and there was no basis for a reasonable belief that evidence was being removed or destroyed). There is no reason to believe that Alaska's exigent circumstances exceptions to the warrant requirement will impose any greater restriction on the state's inspection authority than would be present under federal law.

4. Alaska recognizes warrant exceptions for emergencies.

Alaska has clearly recognized the "emergency" exception to the warrant requirement. *See, e.g., Schraff v. State*, 544 P.2d 834, 841-44 (Alaska 1975); *Gallmeyer v. State*, 640 P.2d 837, 842 (Alaska App. 1982). Entry under the "emergency aid" doctrine without a warrant is permissible where (1) there are reasonable grounds to believe that there is an emergency and an immediate need to provide assistance for the protection of life or property; (2) the search is not primarily motivated by intent to arrest and seize evidence; and (3) there is some reasonable basis, approximating probable cause, to associate the emergency with the area or place to be searched. *Gallmeyer*, 640 P.2d at 842.

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[6] Although Alaska applies a flexible version of the *Aquilar-Spinelli* test rather the federal "totality of the circumstances" test when determining if probable cause exists based on information obtained from a confidential informant, *see State v. Jones*, 706 P.2d 317, 324 (Alaska 1985), this difference does not appear significant, particularly in the context of standards for search or seizure under exigent circumstances since such action is generally based on observations by an enforcement officer.

This test appears similar to the standards imposed under the federal exception to the warrant requirement for entry in the "exigent circumstance" of an emergency situation. *See, e.g., Murdock v. Stout,* 54 F.3d 1437, 1440-43 (9th Cir. 1995) (holding warrantless search of a residence was permissible because (1) the officers had probable cause to believe that a crime had occurred or was occurring and a resident might have been injured or in danger, and (2) there was no indication that the officers were using their investigation as a pretext for conducting a search for evidence). Emergencies are recognized as one form of "exigent circumstance" under federal law; this "emergency doctrine" requires "an objectively reasonable belief that an emergency existed that required immediate entry to render assistance or prevent harm to persons or property." *See, e.g., U.S. v. Moss,* 963 F.2d 673, 678 (4th Cir. 1992). Further, under federal law, searches following warrantless entry for emergency reasons "must be limited to the type of emergency involved," and "cannot be used as the occasion for a general voyage of discovery unrelated to the purpose of the entry." *Id.* at 678. There is no reason to believe that Alaska's "emergency" exception to the warrant requirement will impose any greater restriction on the state's inspection authority than would be present under federal law.

IV. CONCLUSION

In summary, we believe that Alaska's inspection and entry authority meets the requirements of 40 C.F.R. 70.6(c)(2) and imposes no greater restrictions on the state's inspection authority than exist under federal law. We have examined the relevant state and federal regulations, the permit conditions required by state regulations, and state and federal case law. Based on this review we conclude that despite the fact that the Alaska Constitution contains a broader guarantee against unreasonable search and seizure than the United States Constitution, *Woods and Rohde, Inc. v. State, Department of Labor*, 565 P.2d 138, 150 (Alaska 1977), facilities with an operating permit issued under AS 46.14 are closely regulated with little reasonable expectation of privacy and Alaska's provisions requiring owners and operators of these facilities to consent to entry and inspection are permissible under the Alaska Constitution. *See, e.g., Nathanson v. State,* 554 P.2d 456, 458-59 (Alaska 1976). We also conclude that the exceptions to the warrant requirement that are available under federal law are also available under state law and that the restrictions on the state's inspection authority are no greater than under federal law.

We hope that this response answers your questions. Please do not hesitate to contact us if further assistance or clarification is needed.

SAD:prm