

TIMBER
MATERIAL
SALES

11AAC

February 26, 1980

Mr. James H. Johnson
P. O. Box 81634
College, Alaska 99708

Dear Mr. Johnson:

Thank you for your recent letter and enclosed testimony regarding the proposed regulation changes by the State Division of Forest, Land and Water Management.

I am in agreement with you that the regulations are extremely overbearing and should definitely be carefully reviewed. As Chairman of the Administrative Regulation Review Committee and also as an individual who has been previously involved in mining, I am committed to hold public hearings some time within the near future. The Department of Natural Resources' Commissioner and other representatives will be requested to attend the hearings so that other members of the committee, as well as individual citizens, can directly address their concerns and recommendations relating to the proposed regulations. I will notify you on the schedule as soon as it is arranged.

In closing, Mr. Johnson, I appreciate your input and concerns, and I will provide each member of the Regulation Review Committee with a copy of your testimony for their study.

If I can be of further assistance on this or other matters, please do not hesitate to write or call collect to 465-2714 or 465-3871.

Sincerely,

Don Bennett

James H. Johnson
P.O. Box 81634
College, Alaska 99708

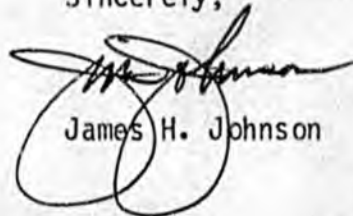
February 7, 1980

Don Bennett
U. S. Senate
Pouch V
Juneau, Alaska 99811

Dear Sir:

Enclosed please find a copy of my testimony regarding regulation changes proposed by the State Division of Forest, Land and Water Management. These proposed regulations are extremely onerous, and deserve the scrutiny of anyone concerned with utilizing Alaska's resources.

Sincerely,



James H. Johnson

JHJ:bg

Enclosure

James H. Johnson
P.O. Box 81634
College, Alaska 99708

January 23, 1980

Theodore G. Smith
Director, Department of Natural Resources
Division of Forest, Land and Water Management
323 E. 4th Avenue
Anchorage, Alaska 99501

Dear Mr. Smith:

The proposed new chapter of the Alaska Administrative code entitled 11AAC 65, Land Use Permits, is the most nefarious set of draft regulations I have read since 11AAC 55. These draft regulations use the pretext of simplifying and consolidating already existing regulations as the foundation for an executive edifice capable of usurping and abusing individual, legislative, judicial and inter-departmental rights. They are too general, too discretionary. In effect, these regulations would give the Division of Forest Land and Water Management unlimited authority to control the activities of anyone who happened to light upon a piece of ground anywhere in the state in anything more than his bare feet.

I am somewhat reluctant to comment on this draft in a specific manner, as many of my objections to these proposals are of a general and ideological nature. For example, I object to the concept of a general purpose land use permit. Why must all activity on state land be "permitted"? What about land use rights? The nature of the general permits proposed in 11AAC 65 are such that no guidelines are given as to what might be required of a permittee, how long a permit will last, what it will cost, whether an activity is indeed even "permissible", or whether an activity that is permissible today will be tomorrow. In short, there is no means by which a man may determine his rights. And indeterminate rights are no rights at all.

It seems clear that proposed 11AAC 65 has been penned from the black ink of that sophisticated well which has bubbled up the notion that the state is a landowner in the same sense as an individual, and that it is a proper function of a government to be a landowner. I do not subscribe to this idea and I believe that it is abhorrent to the basic ideals of American liberty, and of the separation and reservation of rights between individuals and governments. Yet, even from the philosophistic view of the state as a landowner, the proposed concentration of so much discretionary power in the hands of one man can not be justified.

While I decry the proposed regulations of 11AAC 65 on basic terms, I suspect that such input will be considered impractical and of no consequence by your department. Therefore specific objections may seem more useful to you.

Throughout proposed 11AAC 65 there is a conspicuous lack of any mention of mining claims and the rights which are attendant thereto. In fact, I submit that the various sections of proposed 11AAC 65 have been devised to circumvent mining law and to force a general leasing system for mineral development on any state land. For example, 11AAC65.030 states that "unless" (my emphasis) authorizes by a lease....." almost any activity on state land is prohibited without a valid land use permit. And 11AAC 65.070 provides that "the director may refuse to issue a permit and require the applicant to apply for a sale, lease, or other disposal of an interest in state land instead", if "in the director's judgement" the "activity for which the applicant seeks a permit is of such character, duration, or magnitude, or when any other circumstances indicate" (my emphasis), that it should not be permissible. It is only a matter of time before, as 11AAC 65.010 (b) puts it, "a person in authority" will decide that no mining activity of any manner is permissible. There has already been an attempt in the state legislature to introduce a leasing bill for uranium. With the controversy and fervor surrounding the uranium and nuclear industry, I predict that, if left unchecked, these and other provisions of 11AAC 65 will be used immediately to force a defacto leasing system for uranium.

Another proposed provision aimed specifically at hampering the mining industry is 11AAC 65.220. Part (a) restricts the use of a permit to the permittee only, unless a bond is furnished. Since the mining industry uses contractors and consultants extensively, this provision will essentially force a mining claimant to post a bond. Yet 11AAC 65.270 dealing with bonds is nebulous and discretionary. The terms of a potential bond are not defined, and typical language from this section is "at the director's option"; "the director may, in his discretion"; "impose special terms and conditions"; etc. Nor does 11AAC 65.220 (b) offer relief. It is untenable to have a contractor or employee of a permittee as a joint permittee. Presumably, a joint permittee will have the same authority to act or not act under the permit and to represent such actions to the state. If a contractor or employee is at odds with a claim owner, the claim owner will be at risk for actions he may have no control over and which he does not condone.

Section 11AAC 65.130 dealing with public notice will be used to selectively haze the mining industry. Again, at the sole discretion of the director, he may decide that public comment must be sought before a permit is issued, and at the permittee's expense! It is interesting to note to what great lengths and with what imagination bureaucracies will go in their attempts to exempt themselves from statutory public notice and comment requirements. Yet when it serves their purpose, when it is a convenient tool at their disposal, "public notice" is front and center.

The list of objections to these proposed "regs" continues. For instance, 11AAC 65.010 mentions "other disposal document" (s). A mining claim is a disposal document and should not be ignored. 11AAC 65.030 (5)(A) mentions "operations limited to existing roads". What is an "existing road"? The mining industry's history with that question would make anyone shudder. 11AAC 65.040 (a) states that "by order, the director may impose a land use permit requirement" even if "the same activities do not require a permit elsewhere on state land". This is an attempt to circumvent statutory limitations, legislative authority, and the statutory land planning responsibilities of other units of the state government. Section 11AAC 65.650 is irrelevant and dangerous. While it does nothing to confirm a disputant's rights, it is an attempt to place the burden of proof on the disputant. It is an attempt to abrogate the judicial process. 11AAC 65.100 and several other sections mention a "use fee", yet its amount and application are uncertain and subject to change. Section 11AAC 65.150 may conflict with other provisions in state law regarding water rights. 11AAC 65.245, 11AAC 65.255 and the combined effects of other sections of these proposed regulations are incongruous. No one is going to commit hundreds of thousands of dollars to a very risky endeavor such as drilling for minerals or oil and gas, if a permit to do so can be revoked by a "management decision", or, worse yet, merely "upon 30 days notice". The twisted, catch-22 nature of 11AAC 65.245 alone leaves me with a wonderland incredulity. Many of the provisions of 11AAC 65.260 and 11AAC 65.265 dealing with General and Additional Stipulations are oppressive and unreasonable. For instance, it is common practice to fly supplies into remote areas in the winter by utilizing frozen lakes and rivers to land on. Yet 11AAC 65.265 (12) specifically forbids this practice. Other parts are arbitrary, and the list goes on.

The regulations as proposed in draft 11AAC65 are in total so ill-conceived, and they will have such a deliterious effect on every individual and business in Alaska, that they should not be adopted at this time. I urge you to reconsider them in whole, and if there truly is a need to revise the current permit regulations, then much more time and thought should be devoted to this issue than has apparently been applied to date.

Sincerely,

James H. Johnson

JHJ:bg

EARTH-MOVERS OF FAIRBANKS, INC.

GENERAL CONTRACTOR

925 Aurora Drive
Fairbanks, Alaska 99701

Phone (907) 456-5087
(907) 452-5634

January 18, 1980

Representative M. F. Beirne
Assembly Building, Room 209
Pouch Y, State Capitol
Juneau, AK 99811

RE: Proposed Regulations Timber & Material Sales

Dear Representative M. F. Beirne:

It seems 11AAC 71.420 of the Forest, Land & Water Managements proposed regulations arbitrarily lengthens the amount of time necessary to obtain state material sale plus adds adimension of cost and cannot be accurately predicted for bidding purposes. As the regulations are currently written, it takes a minimum of six months for a material sale and up to 1½ years.

A good example of this is the Peede Road Project now under contract to Earth Movers of Fairbanks. This project was awarded in November and we initially applied for a state material sale adjacent to the project.

If we are lucky our permit may go through prior to the 1980 construction season. If the project would have been let in the spring of 1980, it would have been impossible to obtain a state material sale with the time constraints of the project.

As you can see the State sets a time limit on the project and also controls the time necessary for a material sale. The proposed regulation does absolutely nothing to speed up this convoluted process.

Our recommendations are as follows:

1. Delete all reference to apprasials. The current method of establishing values are quite sufficient.
2. Currently there are statutory minimum limits on time required for permit issuance. These should be ten week maximum limits after which the permit is considered valid. If the State insists on regulating our lands in this fashion, it must take the responsibility to see that these things are done in a timely manner. For example, at this time the Fairbanks A.D.L. Office has one man in charge of all

material sales north of the alaska range, He currently has 49 material sales applications on his desk, none of which can be processed in a timely manner.

3. All State Agencies review . should be conducted simulatenously using the same legal advertisements and public comment period.
4. Establish better coordinations with the Crops of Engineers, if a corp permit is necessary .

Sincerely,

EARTH MOVERS OF FAIRBANKS, INC.



Sam Helms

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EARTH MOVERS OF FAIRBANKS, INC.



Sam Helms

March 17, 1980

Mr. Sam Helms
Earth Movers of Fairbanks, Inc.
925 Aurora Drive
Fairbanks, Alaska 99701

Dear Mr. Helms:

I have been provided a copy of your letter to Sally Smith, in which you expressed concern over the proposed regulations relating to timber and material sales. Please know that I share your concerns.

After reviewing your letter, I find your recommendations to have much merit, and I will certainly take them under serious consideration when the Regulation Review Committee takes up 11AAC 71.420; and I will also provide each member with a copy of your letter. Mr. Helms, I can understand the problems which would be forced upon you with the adoption of this regulation, and I am in agreement that it would not expedite the process of a material sale.

In closing, I appreciate your input and recommendations and will make sure that the committee is advised of them. If I can be of future assistance, please feel free to contact me.

Sincerely,

Don Bennett

cc: Administrative Regulation Review
Committee Members



REPRESENTATIVE SALLY SMITH • 321 CHURCH STREET • FAIRBANKS, ALASKA 99701 • IN JUNEAU: POUCH V • JUNEAU, ALASKA 99811

January 28, 1980

Sam Helms
Earth-Movers of Fairbanks, Inc.
925 Aurora Drive
Fairbanks, Alaska 99701

Dear Mr. Helms:

Thank you for taking the time to write regarding the proposed regulations of timber and material sales. Your letter was excellent and constructive.

Senator Don Bennett is Chair of the Administrative Regulation Review Committee and would be able to address your problem properly. As you know, Senator Bennett is also from Fairbanks and understands the situation with the shortened construction season.

I am sending him a copy of your letter in order to expedite action.

Thanks again for taking the time to write.

Sincerely,

A handwritten signature in cursive script, appearing to read "Sally Smith".

Sally Smith
Alaska State Representative

EARTH-MOVERS OF FAIRBANKS, INC.

GENERAL CONTRACTOR

925 Aurora Drive
Fairbanks, Alaska 99701

Phone (907) 456-5087
(907) 452-5634

January 18, 1979

Representative Sally J. Smith
Capitol, Room 415
Pouch Y, State Capitol
Juneau, AK 99811

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EARTH MOVERS OF FAIRBANKS, INC.

Sam Helms

Alaska State Legislature



Senate

SENATOR

DON BENNETT

P.O. BOX 2801
FAIRBANKS, ALASKA 99707

LEGISLATIVE ADDRESS

POUCH V - STATE CAPITOL
JUNEAU, ALASKA 99811

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Don Bennett

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Alaska State Representative

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