

S

B

8

4

COMMITTEE REPORT

HOUSE

(5)

FURTHER:

1/11/82

Date: Feb 17 '82

Mr. Speaker: (Taken from calendar 1/11/82)

The Committee on LABOR & COMMERCE has had HCS SB 84 (2d Rules) and

"An Act relating to the granting of land use authorizations by state agents."

under consideration and ~~(a majority of the committee)~~ ~~(the committee)~~ reports it back with the following recommendations:

- do pass  do not pass
- do pass with attached amendments(s)
- replace <sup>old House</sup> with CS for CS FOR SENATE Bill #84 (L+C)  same title  new title
- and recommends \_\_\_\_\_
- AND attaches a "Letter of Intent"  New Fiscal Note
- reports it back without recommendation
- referred to the \_\_\_\_\_ Committee

MEMBERS SIGNING  
DO PASS

\_\_\_\_\_

\_\_\_\_\_

Terry Martin

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

MEMBERS HAVING  
OTHER RECOMMENDATIONS:

Terry Martin Do Not Pass until November

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Terry Martin  
Terry Martin  
CHAIRMAN

485-5884

H. Labor & Commerce 1981-

Date filed 1-11-82

Date rec'd. 1-14-82

Referral

Comm. hearing 2-12-82 - held over to 1984

Comm. action 2/19/82 - Passed out of Comm. with amendments  
John to type amendments & send to Legal Affairs to have drafted  
2/19/82 sent to chief clerks' office.

2-1-82

Rec'd New Jersey  
Honor. CS.  
Gov's office stopped  
Atty General's office  
John Telling East to be  
in attendance.  
Dept of Resources & sit  
FN & etc. Mary Holleran  
She'll bring (6) copies  
H.E.O. Her testimony will  
be the reading of position  
paper.  
Fish & Game - Mr. Weeks - position  
Mary Johnson out. & on  
Environmental Cns. John Hallam  
but dept. to be back in A.M. they  
to supply FN & position paper  
Ellen Antyres  
STRAUB } SoH10  
BARNETT }

O.K. Gilbreath-HOGA

Public Officials notified of hearing '82

Jonathan K. Tellingast - (Atty general's office)

Jerry Leonard - Gov's Office

John Katz - Dept of Natural Resources

Ernest Mueller - Dept of Environmental Conservation

Ronald Skoog - Dept. Fish & Game

James Soudy - Dir. of Policy Development & Planning.

# MEMORANDUM

# State of Alaska

TO: The Honorable Terry Gardiner  
Representative

DATE: February 26, 1982

FILE NO:

TELEPHONE NO:

FROM: Mary Halloran *Mary Halloran*  
Special Assistant to  
the Commissioner  
Department of Natural Resources

SUBJECT: Impact of Proposed Budget  
Reductions on DNR's  
Permitting Procedures

Per your request, this memorandum identifies the Department of Natural Resources' projects eliminated or reduced at the proposed \$35.0 million funding level which would impact the agency's ability to issue permits.

The definition of "permit" under SB 84 (both the 2nd rules and the latest draft versions) includes all agency authorizations and approvals, including those in conjunction with disposals of an interest in land. Thus, the legislation is more encompassing than might be evident at first glance.

## PERMIT-RELATED PROJECTS IMPACTED BY \$35.0 MILLION FUNDING LEVEL

<u>Priority</u>	<u>Original Request</u>	<u>Revised Request</u>	<u>Positions Eliminated</u>	<u>Projected Name &amp; Consequences of Reduced Funding</u>
-----------------	-------------------------	------------------------	-----------------------------	---

20	1283.2	1184.2	2.0	Water Rights Admin.
----	--------	--------	-----	---------------------

This revision would reduce number of water rights adjudicated particularly in placer mining area, reduce from 5 to 4 the number of basin wide adjudications, and will increase backlog in water permitting.

48	31.0	-0-	0.5	Geothermal Lease Sales
----	------	-----	-----	------------------------

This revision would eliminate a proposed geothermal lease sale for FY 83 and will eliminate the issuance of 1:0 anticipated non-competitive permits and leases.

69	374.3	-0-	7.7	Preference Rights
----	-------	-----	-----	-------------------

This deletion would eliminate processing of preference rights applications. Consequently, claims would be resolved by lawsuit.

83	59.7	-0-	1.0	Interagency Water
----	------	-----	-----	-------------------

This deletion would reduce coordinated reviews with ADF&G and DEC regarding water permits and projects which affect water use and quality; where reviews are done separately, they may require more time.

The Honorable Terry Gardiner  
Page Two  
February 26, 1982

Also affected indirectly would be another project:

91	203.6	60.6	4.0	Public Information
----	-------	------	-----	--------------------

This revision would reduce the number of public information officers from 5 to 1 and would drastically reduce public responses and referrals and information dissemination by DNR. Public Information Officers serve as the Department's "intake" personnel for permits.

98	20.6	-0-	2.0	Water Mgmt. Plans
----	------	-----	-----	-------------------

This deletion would eliminate computerizing water data for use in adjudication, increasing the time necessary for adjudication.

The above-listed figures do not include additional costs that will be incurred as the specific result of the adoption of SB 84. Those costs will be covered in a fiscal note to be submitted by the Department.

We hope this information is of help to you as the Legislature continues its deliberation of this legislation.

cc: Rep. Martin  
Members of House Labor & Commerce

Please keep for Governor's Lunch  
Fri 2/12/82  
After session break.

Terry Martin

2nd HOUSE CS FOR CS FOR SB NO. 84 (L&C)

PROPOSED ADMINISTRATION AMENDMENTS

AMENDMENT 1

Page 2,1.12..

application [.] ,unless a public hearing is held on the application,  
in which case a final decision must be issued within 85 days after  
the date of receipt.

75 days.  
Powers.

1st - 30 days.  
obj by Adm → 65 days.

~~They have not have to:~~  
It encourages the agency to not wait  
until the 29th day to decide if hearings are necessary.

Page 2, ls. 26-28.

under the Appellate Rules of Procedure. Unless the applicant and the agency otherwise agree, [T]the time period may not be extended more than 120 days beyond the time period specified in AS 44.62.632(a).

Passed

AMENDMENT 3

Page 4, lines 6 -- 29

Delete all of sec. 44.62.635(a) and (b) and insert the following in its place:

(a) There are established lead agencies which are solely responsible for issuing coastal management consistency determinations under AS 46.40 and for preparing and submitting state comments on federal permit applications for all projects which include the conveyance of an interest in state land or water or at least one class II permit decision. The lead agency may vary for classes of activities, but shall be that agency that has principal responsibility for authorizing the overall activity. For classes of activities for which no agency with principal responsibility exists the governor shall designate a lead agency by administrative order no later than October 1, 1982. In performing its functions under this section the lead agency shall consult with other resource agencies and with coastal resource districts under AS 46.40. The lead agency shall balance competing factors in reaching its decision. Substantive consideration shall be given to the <sup>assessments data.</sup> comments of resource agencies within their primary areas of expertise. ~~Should not give any resources.~~

(b) If a coastal resource district with an approved and applicable district coastal management program appeals the lead agency's consistency determination, AS 44.62.560--44.62.570 govern judicial review. However, notwithstanding

46.40.100  
complete

46.40.100

AS 44.62.570(c), abuse of discretion is established if the reviewing court determines that the consistency determination is not supported by a preponderance of the evidence in the administrative record.

Page 5, ls. 1-2.

OK

(c) Except as otherwise required by federal law,  
[N]no state agency other than the lead agency may comment  
to a federal permitting agency.

AMENDMENT 5

Page 5, ls. 3-5.

Delete existing subsection (d) and insert the following:

(d) For activities involving both a disposal of interest in land, or plan of operations approval under a previous disposal, and a certification under sec. 401 of the Clean Water Act (33 U.S.C. sec. 1341), the lead agency shall be the Department of Natural Resources.

Page 5, lines 22 - 23.

Administrative appeals [EXCEPT AS PROVIDED IN THIS SECTION THE  
PROCEDURE IS] conducted under this section need not comply with  
AS 44.62.330 - 44.62.630.

Page 5, line 24.

(b) Except when applicable due process rights may require more formal administrative proceedings, the [THE] administrative appeal must be resolved within 45 days

Page 6, ls. 12-13.

Procedure. [THE RIGHT TO APPEAL IS NOT AFFECTED BY THE FAILURE TO SEEK FURTHER REVIEW UNDER AS 44.62.637.] The review is governed by the

Page 6, ls. 15-17.

(b) An appeal taken under this section [HAS] should have preference on the calendar of civil actions before the court and [SHALL] should be decided without unnecessary delay.

AMENDMENT 10

Page 5, ls. 16-17.

extend the time period specified in this section. [FOR UP TO AN  
ADDITIONAL 30 DAYS.]

AMENDMENT 11

Page 7, line 12

Resources, the Department of Enviromental Conservation, the  
Alaska Coastal Policy Council, and the Depart-

CHANGES TO PROPOSED ADMINISTRATION ADMENDMENTS TO SB 84  
(2nd House CS for CS for SB 84 Labor & Commerce)

AMENDMENT 1 - No Change.

AMENDMENT 2 - No Change.

AMENDMENT 3 - See Attached.

AMENDMENT 4 - No Change.

AMENDMENT 5 - No Change.

AMENDMENT 6 - Replace with the following:

Page 5, ls. 16=17

*if given today*

extend the time period specified in this section. (FOR UP TO AN ADDITIONAL 30 DAYS.) However, comments submitted under this subsection shall be submitted no later than 30 days prior to the date on which the lead agency must issue a final decision.

AMENDMENT 7 - Revise as follows:

Page 5, ls 22 - 23

Administrative appeals (EXCEPT AS PROVIDED IN THIS SECTION THE PROCEDURE IS) conducted under this section are not subject to the procedures in AS 44.62.330-44.62.630.

AMENDMENT 8 - No Change.

AMENDMENT 9 - Revise as follows:

Page 6, ls. 12 - 13

Procedure. The right to appeal is not affected by the failure to seek further review under AS 44.62.637 if either solely a question of law is at issue or in those instances in which an administrative appeal would be futile. The review is governed by the

AMENDMENT 10 - No Change.

AMENDMENT 11 - No Change.

AMENDMENT 3 -- Replace with the following:

Page 4, ls. 6 - 29

Delete all of sec. 44.62.635(a) and (b) and insert following in its place:

(a) There are established lead agencies which are solely responsible for issuing coastal management consistency determinations under AS 46.40 and for preparing and submitting state comments on federal permit applications for all projects which involve the disposal of an interest in state land or water or at least one class II permit. The lead agency may vary for classes of activities, but shall be that agency which has principal responsibility for authorizing the overall activity. For classes of activities for which no agency with principal responsibility exists the governor shall designate a lead agency by administrative order no later than October 1, 1982.

(b) In performing its function under this section, the lead agency shall consult with other resource agencies and with coastal resource districts under AS 46.40. The lead agency shall consider facts, data, opinion, conclusions or recommendations submitted by the commenting agency and the coastal resource districts within their areas of expertise. The lead agency shall then balance competing factors in reaching its final decision. No resource agency other than the lead agency has primary expertise on the balancing of competing factors.

(c) In its consideration of the comments of other resource agencies, the lead agency shall give substantive consideration to the facts and data, and to the (opinions, conclusions or recommendations substantiated by said facts and data) which are submitted by commenting agencies within their primary areas of expertise. An opinion, conclusion or recommendation is adequately substantiated under this subsection if it is based on facts or data reasonably relied upon by experts in the field.

(d) If a coastal resource district with an approved and applicable district coastal management program appeals the lead agency's consistency determination, AS 44.62.560 -- 44.62.570 govern judicial review. However, notwithstanding AS 44.62.570(c), abuse of discretion is established if the reviewing court determines that the consistency determination is not supported by a preponderance of evidence in the administrative record.

CHANGES TO PROPOSED ADMINISTRATION ADMENDMENTS TO SB 84  
(2nd House CS for CS for SB 84 Labor & Commerce)

AMENDMENT 1 - No Change.

AMENDMENT 2 - No Change.

AMENDMENT 3 - See Attached.

AMENDMENT 4 - No Change.

AMENDMENT 5 - No Change.

AMENDMENT 6 - Replace with the following:

Page 5, ls. 16=17 *Passed.*

extend the time period specified in this section. (FOR UP TO AN ADDITIONAL 30 DAYS.) However, comments submitted under this subsection shall be submitted no later than 30 days prior to the date on which the lead agency must issue a final decision.

AMENDMENT 7 - Revise as follows:

Page 5, ls 22 - 23

Administrative appeals (EXCEPT AS PROVIDED IN THIS SECTION THE PROCEDURE IS) conducted under this section are not subject to the procedures in AS 44.62.330-44.62.630.

AMENDMENT 8 - No Change.

AMENDMENT 9 - Revise as follows:

Page 6, ls. 12 - 13

Procedure. The right to appeal is not affected by the failure to seek further review under AS 44.62.637 if either solely a question of law is at issue or in those instances in which an administrative appeal would be futile. The review is governed by the

AMENDMENT 10 - No Change.

AMENDMENT 11 - No Change.

AMENDMENT 3 - Replace with the following:

Page 4, ls. 6 - 29

Delete all of sec. 44.62.635(a) and (b) and insert following in its place:

(a) There are established lead agencies which are solely responsible for issuing coastal management consistency determinations under AS 46.40 and for preparing and submitting state comments on federal permit applications for all projects which involve the disposal of an interest in state land or water or at least one class II permit. The lead agency may vary for classes of activities, but shall be that agency which has principal responsibility for authorizing the overall activity. For classes of activities for which no agency with principal responsibility exists the governor shall designate a lead agency by administrative order no later than October 1, 1982.

(b) In performing its function under this section, the lead agency shall consult with other resource agencies and with coastal resource districts under AS 46.40. The lead agency shall consider facts, data, opinion, conclusions or recommendations submitted by the commenting agency and the coastal resource districts within their areas of expertise. The lead agency shall then balance competing factors in reaching its final decision. No resource agency other than the lead agency has primary expertise on the balancing of competing factors.

(c) In its consideration of the comments of other resource agencies, the lead agency shall give substantive consideration to the facts and data, and to the (opinions, conclusions or recommendations substantiated by said facts and data) which are submitted by commenting agencies within their primary areas of expertise. An opinion, conclusion or recommendation is adequately substantiated under this subsection if it is based on facts or data reasonably relied upon by experts in the field.

(d) If a coastal resource district with an approved and applicable district coastal management program appeals the lead agency's consistency determination, AS 44.62.560 -- 44.62.570 govern judicial review. However, notwithstanding AS 44.62.570(c), abuse of discretion is established if the reviewing court determines that the consistency determination is not supported by a preponderance of evidence in the administrative record.

# Alaska Oil and Gas Association



505 W. Northern Lights Boulevard  
Suite 219  
Anchorage, Alaska 99503  
(907) 272-1481

June 4, 1981

The Honorable Jack Fuller  
Chairman  
Administrative Regulation Review Committee  
Pouch V, State Capitol  
Juneau, Alaska 99811

Re: Analysis of Uniform  
Permit Procedures  
Regulations

Dear Representative Fuller:

As promised in our letter of May 29, we are pleased to submit our detailed analysis of the Uniform Permit Procedures Regulations which are being adopted by the Administration.

## Regulatory Reform History in Alaska

In early 1979, Governor Hammond initiated efforts within his Administration toward specific regulatory reform objectives. Wide public appeals were made for assistance in identifying troublesome and onerous regulations. AOGA was also concerned about unnecessary regulations and established a Regulatory Reform Coordinating Committee (RRCC) to work with the Administration.

During the past two years, AOGA's RRCC analyzed regulations and procedures which have a significant impact on our industry. It found a pattern of duplication, layering, unnecessary time delays and unreasonable operating requirements.

During the same period, Bill McConkey first undertook an analysis for the Administration and later for the Legislature and reached similar conclusions. In his December 1980 report to the Legislature, he recommended extensive revision of the regulatory process, including in particular the adoption of legislation establishing permitting time limits such as contained in CSSB 84.

In response to the effort of Mr. McConkey and others, and the support for SB 548 in last year's session, the Administration has proposed Uniform Permit Procedures Regulations (22 AAC 10) as an alternative to legislation. At a press conference on December 5, 1980, Governor Hammond stated that the permit regulations were being written to establish firm reasonable deadlines by which permit decisions must be reached in order that individuals and businesses do not waste time as a result of procedural delays. It is our judgment that these regulations are the antithesis of regulatory reform and do not meet the objectives of regulatory reform.

Regulatory Reform Objectives:

True regulatory reform should accomplish the following:

1. Streamline the coastal management consistency approval process.
2. Decrease permit processing time.
3. Provide certainty in the timely processing of permits to facilitate project planning.
4. Reduce duplication and redundancy.
5. Decrease permit processing costs to both applicants and government.
6. Simplify the permit process to require fewer state employees, and
7. Establish a lead agency.

Failure to meet Regulatory Reform Objectives:

In contrast to the above objectives, the regulations only succeed in accomplishing the direct opposite. The regulations fail to meet these objectives as follows:

1. The coastal zone consistency determination procedures are not streamlined. The regulations grant ultimate control to local districts over resource development projects on state land. This jeopardizes the freedom the state needs to encourage development of its natural resources in the coastal zone. The regulations undermine the objective of obtaining a single consistency determination for projects. The existing problems with joint state/federal permits

are perpetuated and intensified.

2. According to a memo from a Division in the Department of Natural Resources dated January 2, 1981, permit processing time will be increased. In fact, the Division estimates the new regulations will almost double the processing time. Although the estimate was made on an earlier draft, the Division indicates the estimates would not be changed significantly for the final regulations.
3. Substantially new and complex procedures are established which create uncertainty through the provisions for public hearing and appeals. In addition, the new regulations provides numerous opportunities for litigation by third parties. The regulations are so complicated that procedural errors are inevitable, hence creating the basis for legal challenges. Special interest groups are given extraordinary access to the day to day decisions of duly authorized agencies responsible for regulating development of the state's resources. They invite individuals to file capricious appeals, thereby blocking approval of development permits.
4. The new regulations institutionalize and expand existing duplication. The inter-agency review section and the relevant definitions are unduly complicated. Under these regulations, the same agency may review the same project in order to (a) issue a permit under its own authority; (b) comment on an application in the inter-agency review codified by the regulations; and (c) comment on a federal permit application. Further, the regulations give the agency authority to create law by stipulation, a procedure not endorsed by state statute.
5. The permit processing costs to both industry and the state will be increased. One division of the Department of Natural Resources has estimated it will cost an additional \$200,000 per year to implement the regulations affecting oil and gas operations. Since this estimate involves the regulation of only one industry by one division of one of the agencies, it seems likely that the total cost of implementation will be substantial. The increased complexity will require dedication of more people by industry to the permitting process. Delay in the permitting process will result in less efficient utilization of people and equipment on the project. Legal costs to both industry and government will be increased because of the appeals process. Increased lead times will add to the costs of projects as materials and equipment are held on a standby or non-productive basis while waiting on permit approval. The resulting

increased cost will ultimately be borne by the public.

6. More, rather than fewer, state employees will be required to implement these provisions. One division has estimated that four additional employees will be required to process permits and it seems reasonable to assume that other divisions and agencies will also require additional employees.
7. Although the regulations purport to establish the "lead agency" concept of handling permit applications, in fact no true lead agency is created. The lead agency is required to give "great weight" to the comments of other agencies. The definition of "great weight" requires the lead agency to prove by a preponderance of the evidence that a proposed stipulation is not justified. This definition is so onerous that a lead agency may elect to accept the stipulation rather than contest its merits. Unless the lead agency is given reasonable discretion to reject proposed stipulations by commenting agencies, it cannot be fairly alleged that a lead agency concept has been adopted.

The Administration claims that these regulations constitute genuine progress in ending some of the regulatory abuses which most annoy the public. We do not agree. The regulations are unworkable and should not be implemented.

#### Detailed Analysis

Our members have made an extensive and careful analysis of each draft of the regulations and have submitted comments to the Administration at every opportunity. Copies of some of these statements are attached. For the most part these comments have been ignored.

Our article by article comments follow:

#### ARTICLE I. GENERAL PROVISIONS

##### 22 AAC 10.010 Scope of Chapter

This section requires each of the four departments adopting the regulations to modify its own regulations by classifying its permits and appeals. If these procedural regulations become effective before the individual agencies have revised their current regulations, the entire permitting process may very well come to a halt. Apparently there has been little effort to coordinate the promulgation of the procedural regulations

with the revision of individual agency regulations. These regulations should not be adopted until the substance of individual agency regulations is known.

#### 22 AAC 10.020 Deadline on Permit Issuance:

Under subsection (a)(1), action on permit applications can be postponed for an unspecified period of time by finding that "unusual complex issues" exist. Although the Governor stated in his letter to you that major changes had been made in these regulations as a result of public comment, this open-ended provision has remained in the proposed regulations.

Also under subsection (a)(3), the deadline can be extended if the applicant agrees to "a more lengthy review period". Since the applicant needs the approval to conduct his business, he may have no choice but to agree to a longer period for permit review.

To summarize, there is no enforceable deadline for timely action on permit applications. Certainty in the timely processing should be a major objective of regulatory reform.

#### 22 AAC 10.030 Additional Information

This section establishes two different time periods, depending on class, for agency assessment of the need for additional information. Upon receipt of an application for either a class I or class II permit the agency should immediately assess whether additional information is necessary in order to process the permit. Assessment should not require more time for class II permits than for class I permits. We believe that a 15 day period is adequate for both classes of permits.

This section allows an agency to delay action on a permit application by asserting that "additional information" is required of the applicant. Only one request for information should be allowed by an agency and the additional information required should be clearly specified. This section is another example of the Administration's unwillingness to put teeth in its regulatory reform regulations.

#### 22 AAC 10.040 Signing of Applications

Even this seemingly innocuous provision lends itself to the snarling of the permitting process. Since there is no clear definition of who should be qualified to sign the permit application, the agency can arbitrarily assert that the applicant's representative is not "duly authorized" to sign the application.

This has not been a problem in the past. There is no need to formalize requirements for the signing of applications.

#### 22 AAC 10.050 Oral Public Hearings

Public hearing rights are created by these regulations where none are required by statute. The regulations thus allow an agency to override an implicit finding of the Legislature that no hearings should be required.

A plan of operations for a lease never has required public notice. The new regulations require public notice. These activities are approved pursuant to leases already issued by the state, and are subject to the inter-agency review process set up by MOU's between the deciding agency and the commenting agencies. Plans of operations should not be subject to these regulations.

Under this section, new and complex requirements for public notice and hearings are created. These requirements will complicate and lengthen the permitting process and the approval of the lease plan of operations rather than simplify these procedures. We also point out that additional bureaucrats will have to be placed on the public payroll since the agencies will argue that the requirements for public hearings are a new and additional aspect of its work. Again, these requirements are fundamentally at odds with any genuine effort for regulatory reform.

#### 22 AAC 10.060 Decision on Applications

There is no reason why the agency's decision should contain an invitation to contest the decision. Also, serving a decision on any person requesting a copy or who has made comments on the application is a burdensome requirement.

#### 22 AAC 10.070 Permit Conditions

Delay is not the only problem an applicant faces. He also faces the prospect of having virtually any condition, however ill-conceived or contradictory, imposed on the permit approval. The proposed regulations fail to address this important reform. Under questionable statutory authority or regulations written by the agency, virtually any requirement or condition may be imposed unilaterally on the applicant. Meaningful reform of the regulatory process must place some limits on the conditions which can be placed on the permittee.

The state statutes do not authorize the deciding officer to attach design and operating stipulations to a permit.

#### 22 AAC 10.080 Permit Limitations

Operations in Alaska often require changes from planned activities. Under this section, any minor deviation from the plan described in the application would require the applicant to cease operations under the old permit and go back to the agency for a new or amended permit.

The requirement for the agency to determine if a change in plans will result in "significant adverse impacts" brings in a whole new procedure. An affirmative finding would require a new permit. In the past, changes have been reviewed but not under these criteria. A prudent operator would have to shut down operations until such a finding has been made and a new permit issued in the event of an affirmative determination. Any deviation from the approved permit should only require an amendment to the original permit and not require a new permit.

#### 22 AAC 10.085 Memoranda of Understanding

The regulations do not make clear that existing MOU's as well as subsequent MOU's must comply with the requirements of this chapter. All existing MOU's between agencies should either be revised, to comply with the chapter or be withdrawn.

Rather than encouraging joint processing of permit applications, the regulatory reform effort should attempt to limit federal participation in the permitting process where possible. This section provides that such agreements, which extend any deadline, are authorized only where "procedural burdens on the applicant" are reduced. However, it will be the agency, without provisions for applicant input, that decides whether or not such agreements are "good" for the applicant.

#### ARTICLE 2. CLASS I PERMIT

It is difficult to visualize any oil and gas activity which would be classed as Class I permit. DNR personnel have indicated an intent to designate oil and gas plans of operations as Class I but because of the numerous exceptions which they intend to apply to that classification, virtually all oil and gas plans of operations will be Class II.

If the applicant is aggrieved by a decision, his only recourse is the elaborate Class A or Class B appeals machinery under

Articles 6, 7 and 8. These are excessive measures for what should be a simplified process as discussed later on page 10.

### ARTICLE 3. CLASS II PERMITS

Nearly every permit covering activities on oil and gas leases will fall into the Class II category. Although an agency decision on a permit application is due within 65 days, the regulations provide multiple methods for extending that period almost indefinitely. Public notice must be given when a Class II permit is received and the public is given a 30 day comment period. Oil and gas exploration and development in Alaska, until recently, has proceeded in a satisfactory manner without a public notice requirement.

Despite the history of environmentally safe oil and gas operations, the state administration now considers public notices to be necessary. It is difficult to understand what benefits the public can derive from these elaborate, time consuming measures. Public notices provide unlimited opportunity for protests, comments and demands from activist groups, whose objectives include stopping any development or progress.

The regulations make no provision for a specified time in which public notice must be given following receipt of a permit application.

These regulations would allow an expanded opportunity for commenting agencies to interfere with the legitimate right granted by an oil and gas lease. Such leases require the payment of rentals and place an obligation on the leaseholder to diligently explore for oil and gas during the lease term. If a leaseholder is proposing to conduct safe and prudent operations under a lease issued by a state agency, a commenting agency should not be able to deny the lessee the opportunity to exercise those rights.

Section 140 requires exhaustive and formal records and transcripts to be maintained during the public hearing and comment period. Section 150 requires that all oral communications on any "matters of substance" between the applicant and the agency must be reduced to writing. The regulations do not indicate any criteria for determining what are "matters of substance." Many more state employees must be added to the payroll to maintain a process which has no recognizable benefits.

ARTICLE 5.  
COASTAL MANAGEMENT CONSISTENCY DETERMINATIONS

22 AAC 10.500 Single Determination Required for  
Certain Projects:

The regulations attempt to designate a lead agency. We endorse the concept of the lead agency being one with expertise in the matter. For oil and gas operations this would be DNR. We also endorse one consistency determination for state and federal purposes. There is currently a duplication of jurisdiction, and no method is provided in the new regulations to settle disputes between agencies. The following ambiguous language opens the door for an interpretation that the consistency determination is not in fact conclusive:

"The determination made under sections 520-540 is conclusive to the extent of its coverage, but does not affect the jurisdiction of any agency over a proposed project under its own statutes and regulations. Nothing in sections 500-580 of this chapter may be construed as limiting local government jurisdiction over any project."

Other agencies and local governments may seek to impose consistency determination-type conditions on a project that has already received the "single consistency determination".

Any regulation must firmly establish that once a single consistency determination is made, other agencies or local governments having jurisdiction are bound by that determination, and may not seek to abrogate that determination under their own permitting or regulatory authorities.

22 AAC 10.510, 520 and 530

The OCS consistency determination should be a responsibility of DNR, the agency with the expertise, and not DPDP. These regulations do not give DNR the authority to make the consistency determination for all oil and gas activities including the OCS but splits the responsibility among three state agencies.

22 AAC 10.540 and 550

Section 540 states that consistency determinations on "other direct state and federal activities will be made by the appropriate state agency." This section opens the door for further confusion between the state agencies as to the appropriate agency for purposes of making a consistency determination.

While we do not express an opinion as to what NOAA's position will be on this matter, we would point out that these consistency determination regulations do not comply with Section 306 (c)(5) of the Federal Coastal Zone Management Act and its implementing regulations which require a designated agency for state consistency determinations. We believe that the split agency concept as well as all other consistency provisions of these regulations will require NOAA approval, and in view of the substantial deviation from NOAA's designated agency requirements, the state risks not receiving that approval.

22 AAC 10.570 Procedure for Consistency Determinations:

Local coastal resource districts should not be accorded the status of a state "resource agency".

Section 570(b) when read in conjunction section 130(c), requires a deciding agency to give "great weight" to the comments of Coastal Resource Districts with an approved coastal plan. This effectively grants local coastal districts a veto power over projects proposed in their district. Local agencies should not be allowed to block projects of statewide or national importance. The Uniform procedures do not comply with section 306(c)(8) of the Federal CZM Act, which requires the national interest to be accorded full consideration by an approved program, nor section 306(e)(2), which requires that approved programs have a mechanism for assuring that local regulations do not unduly restrict or exclude uses which are in the state and national interest.

22 AAC 10.580 Applicant Responsibility in Multiple Permit Cases:

The effect of this section is to condition the approval of one permit on the approval of another permit. Each permit should stand on its own merits.

ARTICLES 6, 7 & 8. APPEALS

Far from avoiding litigation, the appeals procedure invites protracted litigation on the part of any interested individual. Moreover, these procedures will impede orderly administration by the agencies.

Problems arising primarily from these areas are: (1) no limitation on the eligibility of those who can file appeals ("standing"); (2) the length of the appeals process; (3) complexity of the appeals process; (4) burden on permit applicants; and (5) conflicting appeal procedures.

1. Standing:

Section 060(b) of the regulations requires a copy of the permitting decision to be served upon any person who has commented on the permit application. Section 620 allows any person to serve notice of appeal. Section 640 specifies that a person has standing to appeal if (i) he would be injured in fact by the agency's decision; (ii) he has raised material issues; (iii) the specific issues presented on appeal were raised by the appellant in comment or hearing testimony; and (iv) the requirements of Section 620 have otherwise been met.

This standing requirement is so broad that it might allow state agencies to appeal the issuance of a permit. It is AOGA's position that state agencies ought not be permitted to appeal such decisions.

The test for standing for an individual challenge of an agency decision appears to be similar to that used by courts in allowing an individual to challenge agency actions by judicial means. Under that test, courts have gone so far as to allow individuals to challenge federally permitted hunting and capturing of wild horses simply on the basis that the individual had seen wild horses before and would like to continue seeing them. This test, if applied under the regulations, would allow virtually anyone to claim "injury in fact" and thereby gain standing to file an appeal. If thus interpreted, the regulations provide for an excessively broad spectrum of potential appellants.

Section 640(b) also allows individuals not served with the initial decision to petition for intervention in the appeal. AOGA firmly believes that no provision for intervention should be included in the regulations. While the agency should consider any portion of the prior record that it wishes, intervention should not be permitted during the agency appellate review.

2. Length of Appeals Process:

The appeal processes are excessively long. (See flow chart attached). A Class A appeal can take as long as 95 days without a hearing, and 125 days with a hearing, not including any extension of the allotted time periods. The Class B appeals can take as long as 175 days, and perhaps longer, depending upon the length of time required for the agency to certify the record. The length of the permit process, when combined with the length of the appeals process, establishes an impermissibly long period between the time the application is submitted and the time of final resolution. This, of

course, does not include any time which may be spent in the Superior Court and the Supreme Court in further appeals.

### 3. Complexity:

The appellate process is extremely complex and difficult to administer. Many of the provisions would require the best skills of an experienced trial judge to properly implement.

The sheer number of steps which the agency is required to follow is mind-boggling. In fact, the steps are not even set out in a logical sequence. Section 160 requires that three different sorts of findings be appended to every decision on a permit issued by any of the four agencies. Each of these findings is subject to attack on appeal. Copies of the decisions must be furnished to anyone who has requested it. The pre-hearing conference required by Section 810 will require the specialized services of an attorney. These are only a few of the many intricate legal steps which are beyond the capabilities of existing departmental personnel. More legal help will be required by each of the Departments. It is difficult to understand how such elaborate appeals procedures grew out of an effort to simplify the process.

### 4. Burden on Permit Applicants:

Section 640(a) requires the applicant to become a part of the appeals procedure even if he doesn't wish to.

The Class B appeal process is almost identical with a trial in the Superior Court. It includes publication of notice of appeal, intervention by third parties, discovery proceedings, pre-hearing conference and pre-hearing order, de novo hearing, formal evidence rules, full records certification, etc. These extraordinary requirements are beyond the appeals procedures outlined in the APA. They are a burdensome requirement to impose on the applicant.

All permit applicants will be required, as a practical matter, to hire additional legal help.

### 5. Conflicting Appeal Procedures:

These appeal procedures are certainly in conflict with existing agency regulations for administrative appeal. Existing regulations must be substantially reviewed and revised to eliminate conflicts with the new regulations. This will further complicate the efforts of the agency to bring its procedures into conformance with the new regulations within any reasonable time frame.

The regulations may conflict with the Administrative Procedures Act. Under that Act, the initiation of a hearing to determine whether a right, license, or other privilege should be granted, issued or renewed is made by filing a statement of issues, rather than a notice of appeal. A notice of hearing must be issued at least 10 days prior to the hearing. Finally, adjudicatory hearings are to be presided over by a hearings officer. The regulations may not be in agreement with the above provisions.

We thank you for the opportunity to comment. We urge your efforts to prevent implementation of these counter-productive regulations which nearly totally miss the mark of their intended objective of regulatory reform.

Anytime at your convenience we stand ready to discuss this matter and lend whatever assistance we can.

Very truly yours,



WILLIAM W. HOPKINS  
Executive Director

WWH:km

Attachment

Enclosures

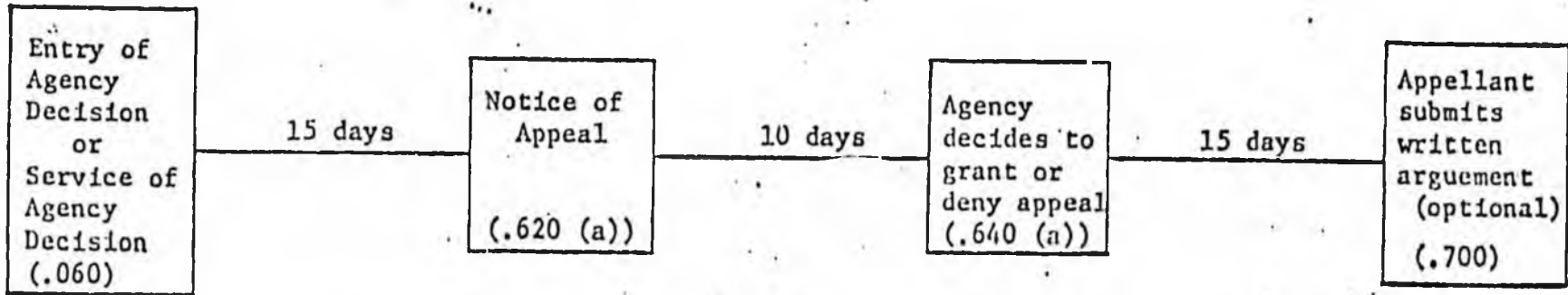
cc: Governor Jay S. Hammond

UNIFORM PERMIT PROCEDURES REGULATIONS (22 AAC 10)

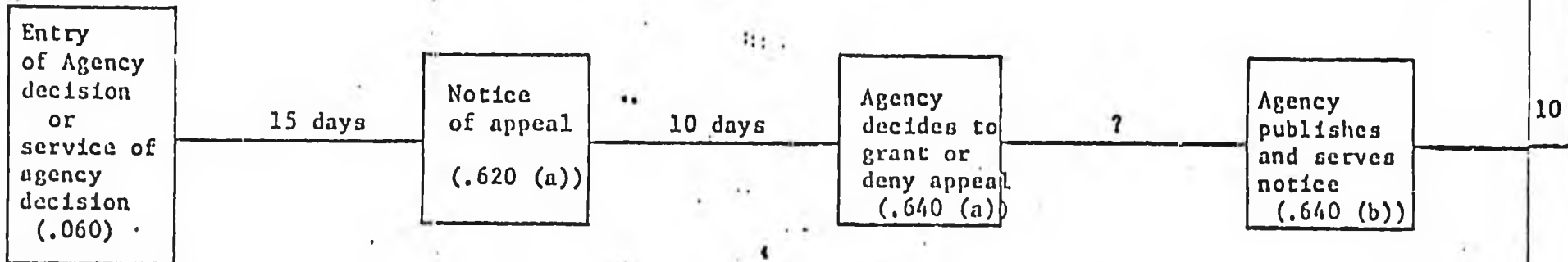
APPEALS PROCEDURES

ARTICLES 6,7, and 8 ...

"CLASS A" APPEALS



"CLASS B" APPEALS



al)

Agency  
Summarily  
Decides  
Appeal  
Discretionary  
(710 (a) )

10 days

Agency  
Requests  
Responsive  
Arguments  
(710 (c) )

15 days

Responsive Arguments Due from Appellate (710 (d) )	Agency Decides Whether to Hold Hear- ing (720 (a) )
--	--

If hea  
10 day

es  
es  
b))

10 days

Intervention  
by others  
permitted  
(640 (b) )

10 days

Opposition  
to :  
Intervention  
Due  
(640 (b) )

10 days

Agency Decision on Interven- tion (640 (b) )	Agency Serves notice of hearing date (800 (a) )
---	--

If hearing  
10 days

Notice of  
Oral Hearing  
Served by  
Agency  
(720 (a) )

10-20 days

Hearing  
Held  
  
(720 (b) )

30 days

Appellate Officer  
Issues Final  
Agency Decision  
with Findings and  
Conclusions  
  
(730)

30 day

If no hearing

30 days

15 days

Appellant  
Serves  
Discovery  
Materials  
(800 (a) )

20 days

Appellees  
Serve  
Discovery  
Materials  
(800 (b) )

At least 15  
day's notice

Agency may hold  
Prehearing  
Conference at  
its Discretion  
(810 (a) )

10 da

Maximum 90 days

30 days

Superior  
Court  
AS 44.62.560

Total Time  
95-125 Days

10 days

Agency  
issues  
preleaving  
order  
(.810 (d))

Hearing  
Held  
(.830)

Agency  
certifies  
record  
(.840)

10 days

Parties may  
serve pro-  
posed find-  
ings  
(.850)

30 days

# *Norpac Exploration Services, Inc.*

ALASKA DIVISION  
P.O. BOX 599  
ANCHORAGE, ALASKA 99510

MILE-HI EXPLORATION CO., INC.

PACIFIC WEST EXPLORATION CO.

2-18-82

Norpac Exploration Services fully supports Senate Bill 84 concerning the processing of permits by state agencies. It has become abundantly clear in the last few years that the particular mechanisms now in place are used to delay and in some cases kill programs that might have been planned. The permitting process is entirely too lengthy and too broad. It would facilitate matters immeasurably if the process could be streamlined to reflect earlier days. During the 60's, only one permit was required for onshore seismic work and this could usually be obtained in a maximum time frame of 2 weeks, often the permit would be issued in 2 or 3 days. Now the review process must clear 3 or 4 agencies, both federal and state, before the permit is issued. Of particular importance in the subject Bill, is the time limits imposed upon the agencies to respond to exploration requests. Alaska exploration work requires more intricate forward planning than comparable work in the South 48 and a timely permit will mean the difference between go, or no go, on a project.

*Charles H. Johnson*

THE FOLLOWING DOCUMENT(S) MAY NOT FILM  
LEGIBLY BECAUSE OF POOR QUALITY OF THE  
ORIGINAL.

TESTIMONY FOR SB 84

MY NAME IS VAL MOLYTEAUX. I AM REPRESENTING VECCO, INC., AN ALASKAN CORPORATION, PROVIDING OIL FIELD SERVICES BOTH IN THE PROSEVOY BAY, NEARFOOT SEA AREA AND THE KENAI AREA IN ALASKA.

OUR WORK IS BECOMING PROGRESSIVELY MORE INVOLVED IN THE REGULATORY PERMIT SYSTEM IMPOSED UPON ALL NEW DEVELOPMENTS BY FEDERAL, STATE, AND MUNICIPALITY GOVERNMENT. NOT THAT WE CONSIDER PERMITTING UNNECESSARY, BUT WE FEEL THE ONEROUS DOCUMENTATION AND DUPLICATION OF PERMITS IS WITHOUT JUSTIFICATION, THE NUMBER OF AGENCIES AND THE TIME INVOLVED TO OBTAIN THE PERMITS IS EXCESSIVE, ALL OF WHICH RESULT IN HIGHER COSTS TO THE CLIENT AND ULTIMATELY THE CONSUMER.

IN THE DEVELOPMENT AND PLANNING STAGES OF A NEW PROJECT IT IS AT FIRST NECESSARY TO IDENTIFY THE PERMIT REQUIREMENT AND THE RESPECTIVE AGENCIES FOR THE SUBMITTAL OF PERMITS. IN SOME CASES VOLUMES OF PAPERS <sup>which</sup> ~~ARE~~ REQUIRED ~~TO~~ NECESSITATE MANY MAN HOURS TO COMPILE, RESULTING IN EVEN MORE MAN HOURS OF DELAYS RESEARCHING GOVERNMENTAL AGENCY INQUIRIES.

IT APPEARS THAT THE GOVERNMENTAL AGENCIES GIVE NO CONSIDERATION FOR THE CONTROLLING COSTS RESULTING FROM THESE OVERBURDENSOME REQUIREMENTS.

PERMIT REQUIREMENTS HAVE IN SOME CASES CAUSED YEARS OF DELAY AND IN OTHER CASES CHANGE OF THE LOCATION OF LABOR PROJECTS. IT HAS RESULTED IN SPIRALING COSTS. WE MUST GIVE MORE CONSIDERATION TO THE COSTS OF THESE BENEFITS WHICH THE PERMITTING SYSTEM IS MEANT TO PROVIDE US WITH.

IT IS TO THIS END THAT WE SUPPORT THE SECOND HOUSE COMMITTEE SUBSTITUTION FOR COMMITTEE SYSTEM FOR THE SENATE BILL ON LABOR AND COMMERCE.

THE PRECEDING DOCUMENT(S) MAY NOT FILM  
LEGIBLY BECAUSE OF POOR QUALITY OF THE  
ORIGINAL.



3216 Iliamna Avenue

~~3216 Iliamna Avenue~~

Anchorage, AK ~~99501~~ 99502

907 243-6389

February 18, 1982

To Whom it May Concern:

My name is Ronald Jordan, President of Northern Drilling Services in Anchorage, Alaska.

We provide weather, radio, medical and labor services to the oil companies. We also lease and rent equipment to these oil companies.

This testimony is in favor of the Second House Committee Substitute for Committee Substitute for Senate Bill #84, Labor and Commerce.

A subcontractor usually knows of an upcoming contract from an oil company and therefore plans for it. Therefore, because of the regulatory agencies method of issuing permits to the oil companies, we, the subcontractors find it very difficult to plan the courses of action in dealing with these contracts. We have our obligations to fulfill and planning ahead, as we do, costs us money when we have to shelve a item because of a delay in a permit that is not issued to an oil company.

It is very difficult to even think about a full time crew for each contract as we can not afford to pay for a crew to be on stand by while waiting for a contract which is depending on a permit.

I believe this Bill would eliminate duplication and speed up the processing of permits.

Sincerely,

Ronald L. Jordan

Northern Drilling Services, Inc.

RLJ:kh

# ALASKA SUPPORT INDUSTRY ALLIANCE

P.O. Box 100, Anchorage, Alaska 99510

TESTIMONY BEFORE THE HOUSE LABOR AND COMMERCE COMMITTEE

ON SENATE BILL 84

BY

JOE MATHIS, PRESIDENT, ALASKA SUPPORT INDUSTRY ALLIANCE

FEBRUARY 19, 1982

MR. CHAIRMAN AND MEMBERS OF THE HOUSE LABOR AND COMMERCE COMMITTEE. MY NAME IS JOE MATHIS. I AM OFFERING THIS TESTIMONY ON BEHALF OF THE ALASKA SUPPORT INDUSTRY ALLIANCE.

THE ALLIANCE IS A NON-PROFIT ORGANIZATION REPRESENTING INDIVIDUALS AND SUPPORT COMPANIES INVOLVED IN THE MINING, CONSTRUCTION AND PETROLEUM INDUSTRIES. THE PURPOSE OF OUR ORGANIZATION IS TO FOSTER AND PROMOTE THE INTERESTS OF THE SUPPORT INDUSTRY AND MORE PARTICULARLY TO IMPROVE PUBLIC UNDERSTANDING OF THE INTER-RELATIONSHIP OF POLITICAL DECISIONS, INDUSTRY ACTIVITIES AND THE ECONOMIC HEALTH OF ALASKA.

THIS BRINGS ME TO WHY THIS TESTIMONY IS BEING OFFERED. WE OF THE SUPPORT INDUSTRY HAVE SUFFERED--ALMOST UNNOTICED BY GOVERNMENT. OUR SUFFERING COMES NOT IN A DIRECT WAY, BUT AN INDIRECT--ALTHOUGH VERY REAL--WAY. EACH TIME BUREAUCRACY DELAYS THE PROGRESS OF MAJOR INDUSTRY BY OVER-REGULATING AND DUPLICATING OF PERMITTING REQUIREMENTS, IT IS CREATING A REAL HARDSHIP ON THE SUPPORT INDUSTRY AS WELL. THERE IS AN APPARENT LACK OF AWARENESS

# ALASKA SUPPORT INDUSTRY ALLIANCE

P.O. Box 100, Anchorage, Alaska 99510

BY SOME REGULATORY AGENCIES AS TO THIS CHAIN OF EVENTS OF INDUSTRY ACTIVITY AND WHAT IMPACT THEIR INEFFICIENCY AND FOOT-DRAGGING HAS ON IT. THIS IS WHAT REGULATORY REFORM SHOULD SEEK TO HELP.

WE OF THE SUPPORT INDUSTRY NEED THE 2ND HOUSE COMMITTEE SUBSTITUTE FOR COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 84 AS MUCH AS, IF NOT MORE THAN, THE MAJOR INDUSTRIES OF THIS STATE.

SUPPORT INDUSTRY SURVIVES BY BEING EFFICIENT AND ABLE TO RESPOND TO THE NEEDS OF MAJOR INDUSTRY. AS SUBCONTRACTORS WE MAY NOT BE REQUIRED TO HAVE THE PERMITS, BUT WE MUST WAIT ALL THE SAME UNTIL THEY ARE GRANTED. UNNECESSARY DELAYS HAVE A REAL AND SUBSTANTIAL IMPACT ON THE SUPPORT INDUSTRY. THE IMPACT COMES IN THE FORM OF LOST TIME, HIGHER UNEMPLOYMENT, AND JUST PLAIN OLD ANXIETY AND WORRY DUE TO EQUIPMENT SITTING IDLE AND CREDITORS KNOCKING AT THE DOOR. THIS INABILITY TO PLAN, BUDGET, AND OPERATE EFFICIENTLY IS VERY MUCH A PROBLEM IN OUR INDUSTRY.

THIS PROBLEM IS CARRIED STILL FURTHER DOWN THE CHAIN. OUR EMPLOYEES HAVE CAR PAYMENTS, HOUSE PAYMENTS, AND FAMILIES TO CARE FOR AND ARE FACED WITH THESE SAME UNCERTAINTIES AND WORRIES ON AN INDIVIDUAL LEVEL.

AS YOU CAN SEE, LACK OF A COMPREHENSIVE AND EFFICIENT REGULATORY SYSTEM REACHES ALL THE WAY DOWN TO THE WAGE-EARNER.

# ALASKA SUPPORT INDUSTRY ALLIANCE

P.O. Box 100, Anchorage, Alaska 99510

INDIFFERENCE BY REGULATORY AGENCIES NOT ONLY DOES INJUSTICE TO PRIVATE INDUSTRY, BUT IT ALSO AFFECTS THE ALASKAN WORKING PEOPLE.

WE AGREE THERE IS A NEED FOR REGULATION. WE FEEL THE BILL BEFORE YOU NOW WILL MORE THAN ADEQUATELY PROTECT THE INTERESTS OF THE PEOPLE OF ALASKA, AS WELL AS ASSIST MAJOR INDUSTRY AND THEREBY GREATLY AID THE SUPPORT INDUSTRY. THEREFORE, I URGE YOU TO SUPPORT THIS LEGISLATION WITHOUT DELAY OR AMENDMENT.

THANK YOU FOR YOUR TIME.

HOUSE LABOR AND COMMERCE COMMITTEE  
REGARDING 2 HCS CSSB-84 ( L&C)

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE. MY NAME IS  
ETHEL H. NELSON, AND I AM AN EXPLORATION LAND REPRESENTA-  
TIVE FOR TEXACO INC., AND AM REPRESENTING THEM HERE TODAY.

WE APPRECIATE THE OPPORTUNITY TO COMMENT TO YOU ON THE  
PROVISIONS OF HCS CSSB 84. AS YOU KNOW, THE MATTER OF REG-  
ULATORY REFORM AND SPECIFICALLY PERMITTING REGULATORY REFORM  
HAS BEEN THE SUBJECT OF MANY PUBLIC HEARINGS DURING THE PAST  
THREE YEARS. THESE HEARINGS HAVE BEEN CONDUCTED ON THE UNI-  
FORM PERMIT REGULATIONS PROPOSED BY THE ADMINISTRATION  
(22 AAC 10) AS WELL AS SB 84.

THERE HAS BEEN, IN THE PAST, A STALEMATE WITHIN INDUSTRY  
REGARDING SOME PORTIONS OF EARLIER DRAFTS OF THE BILL.  
HOWEVER, THE AREAS OF DISAGREEMENT BETWEEN COMPANIES HAVE  
BEEN SOLVED AND THERE IS NOW UNITED SUPPORT BY AOGA MEMBER  
COMPANIES OF THIS BILL.

INDUSTRY HAS MADE EXTENSIVE AND CAREFUL ANALYSES OF EACH  
DRAFT OF THE REGULATIONS, AND THE BILL, AND HAS SUBMITTED  
CONSTRUCTIVE COMMENTS, MADE IN GOOD FAITH, TO THE ADMINIS-  
TRATION AND TO VARIOUS LEGISLATIVE COMMITTEES AT EVERY  
OPPORTUNITY. THESE COMMENTS HAVE BEEN SELECTIVELY IGNORED  
BY THE ADMINISTRATION.

HEARING BY THIS COMMITTEE LAST WEEK.

THE ADMINISTRATION, HOWEVER, HAS REQUESTED SEVERAL AMENDMENTS TO THE BILL, SOME OF WHICH WE SUPPORT AND SOME OF WHICH WE FEEL ARE NOT IN THE BEST INTEREST OF THE STATE OR THE PUBLIC BECAUSE THEY DO NOT PROMOTE ORDERLY DEVELOPMENT OF THE STATE'S RESOURCES. IN THE INTEREST OF TIME, I WILL NOT DISCUSS THESE AMENDMENTS EXCEPT TO SAY THAT DESPITE THE FACT THAT THERE IS A GREAT DEAL OF COMPROMISE ALREADY REFLECTED IN THE VERSION BEFORE YOU, WE ARE, IN GOOD FAITH AND IN THE SPIRIT OF FURTHER COMPROMISE, WILLING TO JOIN WITH OTHERS IN ACCEPTING THIS BILL AS DRAFTED EVEN WITH THESE PROBLEM AREAS, AND THAT WE ARE IN FULL AGREEMENT WITH TESTIMONY WHICH WILL BE GIVEN BY MARC BOND ON BEHALF OF AOGA A LITTLE LATER.

SPECIFICALLY, I WOULD LIKE TO COMMENT ON SOME OF THE BENEFITS OF THIS BILL TO ALASKA AND ITS CITIZENS.

NUMBER ONE, ASSUMING WE CAN START ALL OVER WITH THE DRAFTING OF REGULATIONS TO IMPLEMENT THE BILL, IT GIVES THE STATE THE OPPORTUNITY TO IMPLEMENT UNIFORM PERMIT PROCEDURES AND GIVES SOME MEANINGFUL REGULATORY REFORM.

ALSO, FOR THE FIRST TIME IN THE HISTORY OF STATEHOOD, THIS BILL GIVES LOCAL RESOURCE AGENCIES THE STATUTORY RIGHT TO BE HEARD REGARDING PERMIT ACTIVITIES IN THEIR COMMUNITY AND THE RIGHT FOR SUBSTANTIVE CONSIDERATION BY THE STATE OF THEIR DOCUMENTED

AGAIN, ASSUMING REASONABLE TIME FRAMES ARE INCLUDED IN THE REGULATIONS IMPLEMENTING THIS BILL, THE PERMIT PROCESS TIME AND THE NUMBER OF STATE EMPLOYEES NECESSARY TO CARRY OUT THE PROCESS WILL BE CONSIDERABLY LESS THAN IT WOULD BE UNDER THE PROVISIONS OF EARLIER DRAFTS OF THE BILL AND THE PENDING UNIFORM PERMIT REGULATIONS.

MR. CHAIRMAN, THE PROBLEMS THIS LEGISLATION IS DESIGNED TO CURE ARE REAL PROBLEMS. THEY MAY SOMETIMES BE SIMPLE, BUT THEY ARE ALL PART OF THE COMPLEX BUSINESS WHICH IS REPRESENTED BY THE PETROLEUM INDUSTRY IN PARTICULAR AND OTHER MINERAL EXTRACTING INDUSTRIES IN GENERAL.

ALASKA'S WEALTH IS ALMOST ENTIRELY DEPENDENT ON THE PRODUCTION OF ITS MINERAL RESOURCES; THAT PRODUCTION IS, UNDER THE PRESENT PERMITTING PROCEDURES, TIME CONSUMING AT BEST AND COSTLY TO BOTH THE STATE AND THE INDUSTRY IT SHOULD BE SERVING.

I WOULD LIKE TO REITERATE THAT WE STRONGLY SUPPORT THE BILL AND ASK THIS COMMITTEE TO APPROVE IT.

AGAIN, WE THANK YOU FOR THE OPPORTUNITY TO DISCUSS THIS VERY IMPORTANT LEGISLATION WITH YOU.

THANK YOU.

DELANEY, WILES, HAYES, REITMAN & BRUBAKER, INC.

JAMES J. DELANEY  
EUGENE F. WILES  
GEORGE N. HAYES  
STANLEY H. REITMAN  
JOHN K. BRUBAKER  
RAYMOND E. PLUMMER, JR.  
DANIEL A. GERETY  
ROBERT L. EASTAUGH  
STEPHEN M. ELLIS

ATTORNEYS AT LAW  
SUITE 400  
1007 WEST 3RD AVENUE  
ANCHORAGE, ALASKA 99501  
TELEPHONE 279-3581  
TELECOPIER 279-3587  
AREA CODE 907

CLAY A. YOUNG  
KAREN L. HUNT  
FRANK S. KOZIOL, JR.  
WILLIAM E. MOSELEY  
MARC D. BOND  
JACQUELINE CARR-AGNI  
J. MICHAEL MOXNESS  
J. D. CELLARS  
GREGORY J. MOTYKA

February 24, 1982

Mr. Jeff Barry  
House Labor & Commerce Committee  
Alaska State Legislature  
Pouch V (MS 3100)  
Juneau, Alaska 99811

Re: 2nd HCS CSSB 84 (L&C)

Dear Jeff:

As promised, enclosed is a copy of the testimony which I had prepared for presentation to the committee last week. As you will note, this testimony deals exclusively with the amendments which the administration, via Attorney General Condon, had proposed to the Labor & Commerce Committee Substitute for SB 84.

Should you have any questions regarding these comments, please do not hesitate to contact me.

Very truly yours,

DELANEY, WILES, HAYES,  
REITMAN & BRUBAKER, INC.

*Marc D. Bond*

Marc D. Bond

MDB/cs  
Encl.

AOGA COMMENTS ON PROPOSED ADMINISTRATION  
AMENDMENTS TO HCS CSSB 84 (L&C)

Presented by Marc D. Bond,  
Counsel for Chevron U.S.A. Inc.

2-19-82

The bill that we support is "2nd House Committee Substitute for Committee Substitute for Senate Bill No. 84 (Labor & Commerce)". I will discuss amendments to that bill that have been proposed by Attorney General Wilson Condon. These comments are concurred in by all the members of AOGA who have worked on this issue.

1. Amendment #1.

This amendment would allow 85 days for the processing of a Class II permit, if a public hearing were held on the application. Initially it should be noted that this appears to be a replacement in the bill of the provision allowing for a 20-day extension for all classes of permit applications if a hearing was held. That provision was contained in § 633(c) of the 2nd Rules substitute which has not been superseded.

It is industry's position that this provision is unnecessary and unwarranted. When SB 84 was originally introduced, a 30-day maximum handling time was applied to all permit applications. Bowing to administrative persuasion, it was agreed that hearings, which are mandated by statute,

could not be held in the 30-day period. Accordingly, the bill was rewritten as it is now: § 632(a)(2) allows 65 days for applications upon which public notice on interagency review is mandated.

Since an additional 35 days were included expressly for the purpose of accommodating public hearings, the extra 20 days are unnecessary and a contradiction of the purpose behind the Class I, Class II permit distinction.

For these reasons we oppose this amendment.

2. Amendment #2.

This amendment would allow the applicant and the agency to agree to an extension of the application period beyond the 120 days (4 mos.) already permitted by § 633(a). This amendment is very similar to a provision in the 2nd Rules version which would have allowed the time period to be extended in all cases by mutual agreement.

What appears to be an innocuous provision is actually probably unnecessary and an express invitation to further delay. It appears that even without this provision, an applicant may be able to authorize an extension of the time limits if he felt it was in his best interests. On the other hand, stating this expressly in the bill provides the agency with a potential fulcrum to buy additional time. We therefore oppose Amendment #2.

3. Amendment #3.

This amendment rewrites all of § 635(a) and (b). This section is one of the key provisions of the bill insofar as it establishes the lead agency principle for coastal management consistency determinations and comments on federal permits. Before discussing the proposed amendments, it is important to set forth the objectives of this section.

Under current law, any permit that affects the coastal zone cannot be approved unless it is found to be consistent with the coastal management program. If more than one permit is required for the project, each permit involves a redundant CZM consistency determination. Contrary determinations can be reached by different agencies on the same project. In the same vein, any project that requires a water quality certification by the U.S. Army Corps of Engineers is subject to comment by all state agencies.

It is industry's view that the state should speak with one voice in both cases. In each case, the agency which has the principal responsibility for dealing with the overall activity should be the lead agency. In order to function as a true lead agency, the agency must have the discretion, after due consideration, to accept, reject or modify the comments made by other agencies. In order to assure that the state speaks with one voice, non-lead agencies must be prohibited from making separate comments to federal agencies.

The proposed amendment changes the bill in several significant and adverse ways:

a. It limits the lead agency concept to projects involving the conveyance of an interest in state land or water, or at least one Class II permit decision. There is no reason to so confine this idea. Only one decision on consistency and only one comment on federal permit applications should be made regardless of the class or number of permits needed for the project.

b. The proposed amendment does not specify that the lead agency must be a "resource agency" as defined in AS 44.62.640(c)(4). In permitting the use of land or water, no agency other than the "resource agencies" should become the lead agency, because no other agency has the necessary expertise.

c. The proposed amendment requires the lead agency to give "substantive consideration" to the "comments" of other resource agencies. Neither term is defined, and it appears that the administration would probably define "substantive consideration" by regulation in the same way it defined the term "great weight" in the proposed Uniform Permit Procedure Regulations, 22 AAC 10.920(7) - i.e., shifting the burden of proof to the deciding agency to reach a contrary conclusion.

The deciding agency should have this burden, if at all, only as to the documented factual statements and data produced by the commenting agency. The administration amendment would impose this burden on the deciding agency as to factual statements, comments, opinions and recommendations, since the term "comment" is not defined.

d. The proposed amendment places a heavier burden on the lead agency with respect to an appeal by a coastal resource district of a consistency determination. This section is burdensome, unnecessary and conflicts with the provisions of AS 46.40.100 of the Alaska Coastal Management Program:

i. No reason exists to give greater emphasis to the comments of coastal resource districts than to those of other state agencies. In effect this provision constitutes the districts as the lead agency for consistency review - a result not intended by the legislation and not in the best interests of the state.

It should be pointed out that the bill as drafted requires the lead agency to consider documented facts produced by coastal districts. This is not a requirement under current law, and thus gives more emphasis to the comments of local districts.

ii. The appeal right implicitly granted to districts by subsection (b) conflicts with the enforcement provisions

of AS 46.40.100. That section specifies how complaints concerning perceived violations of the district plan are to be handled. It allows a district, a citizen of the district or a state agency to petition the Alaska Coastal Policy Council for a hearing on the matter. The Council can then order an offending district or agency to comply with the plan in question. In addition, the section provides that such orders may be enforced by the superior court. No justification for circumventing this procedure is given by the administration. The bill as drafted would leave the enforcement provisions in AS 46.40.100 intact.

We believe the bill as drafted encompasses the concerns raised by the administration, and the agreement reached last fall concerning the relationship between local districts, state agencies and the lead agency.

For these reasons we oppose the proposed amendment.

4. Amendment #4.

This amendment would allow a state agency other than the lead agency to comment on a federal permit application where federal law so require. Federal law sometimes requires that comments be solicited from a particular state agency concerning a project which is undertaken by a federal agency

or which requires a federal permit. An example is the Fish and Wildlife Coordination Act, which requires consultation with the head of the agency exercising administration over the wildlife resources of the state. 16 USC § 622(a). Cf. 42, USC § 4334.

We believe that federal law requiring the solicitation of comments from specific state agencies would override the section as written. Nevertheless, we support the proposed amendment in order to make the exception explicit.

5. Amendment #5.

The proposed amendment would specify DNR as the lead agency in certain instances. The amendment does not accomplish the intended result.

The amendment is confusing and difficult to understand. The provision could be interpreted to require DNR to complete § 401 certifications; DNR does not presently have the expertise to do this.

Our language is clear: the completion of § 401 certification by an agency does not alone constitute that agency as the lead agency.

6. Amendment #6 (Condon #7).

This proposed amendment attempts to state that appeals of permitting decisions are not subject to the normal

APA procedures. The proposed language states the appeals "need not comply with" the APA procedures. While we support the intent of the change, we propose that the amendment be modified to read as follows:

"Administrative appeals [EXCEPT AS PROVIDED IN THIS SECTION THE PROCEDURE IS] conducted under this section are not subject to the procedures outlined in AS 44.62.330 - 44.62.630."

With this change, we support the amendment.

7. Amendment #7 (Condon #8).

The proposed amendment would allow the administrative appeals time limits to be extended "when applicable due process rights may require more formal administrative proceedings." We object to this amendment.

a. No agency or individual is set forth whose responsibility it is to determine when "applicable due process rights" require more time.

b. This undefined catch-phrase may become a vehicle by which administrative appeals may take longer than the specified time period as a matter of course, rather than exception.

c. "Due process" in the constitutional sense requires notice of an action affecting a person and an oppor-

tunity to be heard thereon. Kodiak-Aleutian Chapter of Alaska Conservation Soc. v. Kleppe, 423 F.Supp. 544 (D. Alaska 1976). No one has a vested right in any particular mode of procedure such that legislative change is prohibited. Arctic Structures, Inc. v. Wedmore, 605 P.2d 426, 436 (Alaska 1979). Due process requires only that a substantial and efficient remedy remain available. Id. There appears to be no reason why a constitutionally permissible appeal procedure could not be outlined by regulation and completed within 45 or 65 days.

d. If there are statutes which require a longer period of time, the phrase "Except as otherwise required by federal law," could be inserted in front of subsection (b).

8. Amendment #8 (Condon #9).

This proposed amendment would require every appellant of a permitting decision to seek an administrative appeal prior to initiating a court appeal. It would require the "exhaustion of administrative remedies."

We believe that the potential appellant should have the option to decide whether the administrative record is sufficient for a court appeal. In many cases, further administrative appeal will result only in a rubber stamp of the initial permitting decision. In other cases, a question of law may be raised that should be resolved with dispatch by a

court. In such cases, a mandatory administrative appeal only serves to waste time.

9. Amendment #9 (Condon #10).

This proposed amendment would effectively eliminate the preference right of a permit appeal on the civil calendar. The stated purpose of the amendment is to avoid the amendment of court rules in violation of Alaska Const. Art. IV, § 15. This section requires a two-thirds vote of the legislature to change court rules.

This section as contained in the draft bill does not change court rules. No court rule (with the possible exception of the "speedy trial" rule in criminal cases, Criminal Rule 45) establishes a preference for court cases. This has traditionally been done by legislation, and is a matter of substantive, rather than procedural law. Cf. lien foreclosure proceedings which are granted preference by statute. AS 34.35.005(c).

Aside from the non-amendment of court rules, the directory language "should have" has no defined legal meaning. It is technically inartful and legally meaningless.

10. Amendment #10 (Condon #6).

This proposed amendment would eliminate the time

limit on extensions by the requesting agency for commenting agencies to submit comments. We oppose this amendment.

This amendment would permit commenting agencies to submit comments on the day before a permitting decision is required, thus allowing the deciding agency, the applicant and others no time to respond to the comment. Some definite time limit must be set. It is submitted that 30 days, in addition to the 30 days initially given, is more than sufficient within which to generate a comment.

11. Amendment #11.

The proposed amendment would include the Alaska Coastal Policy Council as a "resource agency". This addition is unnecessary and duplicative. We oppose the amendment.

The Alaska Coastal Policy Council has no permitting responsibility and therefore should not be included in the permit reform bill.

Furthermore, the Council already has jurisdiction to review consistency determinations when petitioned to do so under AS 46.40.100. The Council should not have the function of being the lead agency on a consistency review, and then be called upon to review its own decision pursuant to AS 46.40.100.

August 25, 1981

TESTIMONY OF TIM BRADNER  
SOHIO ALASKA PETROLEUM COMPANY  
ON 2ND RULES COMMITTEE SUBSTITUTE  
SENATE BILL 84

10/29  
T152

Thank you for this opportunity to testify. My name is Tim Bradner. I am with Sohio's Government Affairs office in Anchorage. With me is Roger Herrera, Sohio's Alaska Exploration Operations Manager. I'm going to make a few opening remarks, Mr. Chairman, and then turn our presentation over to Mr. Herrera, who will discuss some of our permitting problems, using two North Slope exploration wells we drilled last winter as examples.

This is the second year in a row, Mr. Chairman, that a permit-reform bill -- essentially the same bill -- has been left on the House calendar the last day of the session. Senate Bill 524 died on the calendar in the closing hours of the session in 1980. This year Senate Bill 84 could not be acted on before adjournment and will appear automatically in third reading next January.

Sohio and other petroleum companies, as well as other resource groups have actively worked on permit-reform legislation development with the state administration and the legislature for several years now. Several important concepts from SB-524 in 1980, particularly the maximum time periods for issuing permits, have been carried over into 1981. But there are important new ideas, such as the lead agency concept, embodied in SB-84. Mr. Chairman, we would urge this committee to study those new ideas closely.

The permitting problem is very complicated, Mr. Chairman. It results from a complex and subtle interplay between two federal acts and state agency responses to those federal actions. There is no simple solution that will solve everything, but legislative enactment

of some form of SB-84 will be a good start in resolving at least the state's response to these federal acts.

Here's the basic problem: Until two or three years ago, our permit procedures with both state and federal agencies were fairly simple and straight forward. But then two things happened. First, the federal Corps of Engineers assumed permitting jurisdiction over wetlands; second, the federal Coastal Zone Management Act that required a state consistency determination before the federal permit could be issued. The problem comes in the manner in which state agencies have responded to the Corps solicitation for state comments. What was a fairly simple permit process has now become disorderly, confusing, and very time-consuming and costly.

In practical terms, we must get a Corps of Engineers permit for any road extension or gravel pad in the Prudhoe Bay field, which as many of you know, is in a coastal wetland. Almost all onshore North Slope development, as well as offshore, is subject to Corps permits, state consistency determinations and sometimes conflicting stipulations put forth by different state agencies in response to the Corps solicitation for comments. The Corps regulations does not permit that agency to arbitrate between conflicting state positions and stipulations, and the end result is usually that the Corps accepts all state agency comments as formal stipulations on the Corps permit.

The state administration has tried to smooth this process by requiring all state comments and stipulations to be put to the Corps through the governor's office, but this approach has had problems and the administration is now re-thinking this process.

The federal requirement for a consistency finding by the state is an added complication. Those of you familiar with Coastal Zone Management know that Alaska's CZM program is a general statement of values; environmental protection balanced with resource development, etc. But it becomes a matter of interpretation by a state entity, in

this case the Division of Policy Planning and Development, as to whether a particular Corps permit application, for a Prudhoe Bay road, pad, or an offshore gravel pad, is consistent or inconsistent with a general notion of environmental protection. If the finding is inconsistent, no Corps permit can be issued. What usually happens, however, is that a consistency finding is issued, but with several stipulations, such as seasonal drilling restrictions and other operational requirements. Some of these stipulations can be very difficult and costly to comply with.

In conducting this consistency interpretation, the governor's office receives comments in an unstructured manner from many state agencies. The lack of a clear set of regulations or a statute governing this interchange leads not only to great delay, but also to significant differences of opinion on the part of various agencies over specific projects.

In SB-84, Mr. Chairman, some needed order would be brought to this process by movement of this consistency finding to the primary state line agency dealing with the activity -- the "lead agency". In the case of petroleum, it would be the Department of Natural Resources.

My saying this implies no criticism of the way DPDP has handled these procedures, Mr. Chairman. It is a complex process thrust upon well-intentioned people who have had to arbitrate sharply different opinions among state agencies. Sohio has been pleased with responses of individuals in that division to our problems; our problem here is with basic organization of the process.

Sohio's primary concern, Mr. Chairman, has been the need to give structure and organization to the way state agencies respond to this federal consistency and Corps of Engineers stipulation process. The present system is disorderly, confusing and has led to problems in development activity in the Prudhoe Bay field and more serious problems in our exploration program.

To this extent, certain concepts in SB-84, like the lead agency, are more important to us as a North Slope operator than other concepts, such as maximum time-periods, although that is also important.

I would also like to say, Mr. Chairman, that the state administration has grown to recognize many of these problems, and has been working on ideas that are very similar to those developed by industry. We would urge the committee to review several proposed versions of SB-84 that have been worked on in draft form since the end of the session. These include an August 17 draft by the Alaska Oil and Gas Association as well as proposed amendments by the administration in meetings with several companies, including Sohio. We feel the administration amendments have some good ideas and should be looked at very carefully. The AOGA draft also deserves study. We look forward to working with you in future work-sessions of these committees.

With that, I will turn this over to Mr. Herrera.

Testimony by

Max D. Nalley

Exxon Company USA  
February 19, 1982

before the

House Labor and Commerce Committee

regarding

2nd HCS CSSB 84 (L&C)

MR. CHAIRMAN, I AM MAX NALLEY, ALASKA PUBLIC AFFAIRS MANAGER FOR EXXON COMPANY, U.S.A. I AM PRESENTING THE COMMENTS OF MR. RICHARD H. WEAVER, EXXON'S ALASKA OPERATIONS MANAGER, WHO IS NOT ABLE TO BE HERE TODAY DUE TO A PRIOR COMMITMENT TO MEET WITH COMMISSIONER KATZ.

EXXON APPRECIATES THIS OPPORTUNITY TO COMMENT ON THIS DRAFT BILL WHICH WE VIEW TO BE OF GREAT IMPORTANCE TO THE STATE, ITS PEOPLE AND THE INDUSTRIES CONCERNED WITH RESOURCE DEVELOPMENT. EXXON SUPPORTS THE DRAFT COMMITTEE SUBSTITUTE FOR THE LATEST VERSION OF SB-84 (2nd HCS CSSB 84 (L&C)). IN THE INTEREST OF TIME, OUR COMMENTS TODAY WILL BE LIMITED TO THE SPECIFIC PORTIONS OF THE DRAFT BILL THAT RELATE TO THE TIME PERIODS REQUIRED FOR STATE RESOURCE AGENCIES TO RENDER FINAL DECISIONS ON PERMIT APPLICATIONS.

IT IS OUR BELIEF THAT THE TIME CONSTRAINTS ESTABLISHED IN THIS LEGISLATION ARE ADEQUATE AND WORKABLE. WE WOULD FURTHER OBSERVE THAT THIS LEGISLATION PROVIDES THE PROCEDURE FOR THE GOVERNMENT TO BALANCE THE LEGITIMATE INTERESTS OF THE PERMIT APPLICANT WITH THE INTERESTS OF THOSE WHO MAY BE IMPACTED BY THE ISSUANCE OF THE PERMIT. THIS LEGISLATION MAKES A REAL, CONCERTED, AND WELL DEFINED EFFORT TO INSURE THAT LEGITIMATE AND JUSTIFIABLE CONCERNS ARE CONSIDERED AND THAT THOSE CONCERNS INFLUENCE THE DECISION MAKING PROCESS.

LET ME JUST QUICKLY OUTLINE HOW THE TIME FRAMES CONTAINED IN THE BILL COULD WORK IN THE PERMITTING PROCESS:

THE DRAFT BILL REQUIRES THAT EACH STATE RESOURCE AGENCY MUST CLASSIFY THE PERMITS WITH WHICH IT DEALS INTO ONE OF TWO CLASSIFICATIONS AND ADOPT PROCEDURAL REGULATIONS RELATING TO THE PROCESSING OF EACH CLASS OF PERMITS.

CLASS I PERMITS ARE THOSE WHICH REQUIRE A FINAL DECISION WITHIN 30 DAYS, WHILE

CLASS II PERMITS - THOSE WHICH, BECAUSE OF REQUIREMENTS FOR PUBLIC NOTICE OR PUBLIC HEARING OR INTERAGENCY REVIEWS, DEMAND MORE TIME - REQUIRE A DECISION WITHIN 65 DAYS.

IT IS OUR BELIEF THAT THE GREAT MAJORITY OF PERMITS WHICH THE RESOURCE AGENCIES ISSUE ARE OF A RECURRING AND ROUTINE NATURE WITH WHICH THE AGENCIES HAVE CONSIDERABLE PRIOR EXPERIENCE. THESE PERMITS SHOULD EASILY BE PROCESSED WITHIN EITHER THE 30-DAY OR 65-DAY TIME FRAME.

ADDITIONALLY, A VERY KEY COMPONENT OF THE DRAFT BILL FOR THOSE CONCERNED THAT THE TIME FRAMES ARE TOO SHORT IS THE PROVISION THAT ALLOWS THE LEAD AGENCY TO EXTEND THE TIME PERIOD BY AS MUCH AS 120 DAYS IN THOSE INSTANCES WHERE THE PERMIT INVOLVES UNUSUALLY COMPLEX ISSUES. WE NOTE THAT THERE HAS BEEN NO ATTEMPT TO DEFINE "UNUSUALLY COMPLEX ISSUES" IN THE LEGISLATION AND THAT IS PROPER, BECAUSE THIS IS A DECISION THE AGENCY SHOULD HAVE THE AUTHORITY TO MAKE ON A CASE-BY-CASE BASIS.

THE TOTAL ELAPSED TIME FOR PERMIT DECISIONS ON COMPLEX, CLASS II APPLICATIONS CONCEIVABLY COULD THEN BECOME 185 DAYS-- MORE THAN SIX MONTHS. THAT IS ENOUGH TIME, FOR EXAMPLE, FOR THE LEAD AGENCY TO SPEND ONE MONTH TO DETERMINE THAT THE PERMIT IS, IN FACT, COMPLEX; A MONTH TO GET THE INFORMATION OUT TO ANY AFFECTED COMMUNITIES AND OTHER RESOURCE AGENCIES; A MONTH TO GO OUT AND HOLD HEARINGS IN THE COMMUNITIES; ANOTHER MONTH TO COME BACK AND RECEIVE COMMENTS FROM ALL CONCERNED; AND TWO MORE MONTHS FOR THE LEAD AGENCY TO DIGEST ALL THE COMMENTS AND MAKE A DECISION ON ISSUANCE OF THE PERMIT.

WE FEEL THESE TIME FRAMES ARE ADEQUATE AND ALLOW AMPLE OPPORTUNITY FOR GATHERING INFORMATION FROM OTHER AGENCIES AND AFFECTED LOCAL AREAS, AS WELL AS TIME FOR SERIOUS CONSIDERATION BY THE PERMITTING AGENCY OF ALL THE FACTS PRESENTED, BEFORE MAKING A PERMIT DECISION.

THERE ARE TWO ADDITIONAL OBSERVATIONS WE WOULD MAKE CONCERNING THE TIME FRAME SPECIFIED IN THE DRAFT BILL:

FIRST, THE TIME CONSTRAINTS DICTATE THAT THE PERMITTEE PREPARE HIS APPLICATION IN A COMPLETE AND THOROUGH FASHION SO THAT HE HAS SOME DEGREE OF ASSURANCE THAT THE APPLICATION CAN BE REVIEWED AND APPROVED WITHIN THE TIME ALLOWED, SINCE THE ALTERNATIVE FOR THE APPLICANT IS DENIAL OF THE PERMIT

AS A MATTER OF PRACTICE, WITH CRITICAL PERMITS EXPERIENCE SHOWS THAT APPLICANTS AND AGENCIES WORK IN CONCERT LONG BEFORE THE PERMIT IS OFFICIALLY FILED TO DEFINE THE POINTS THAT NEED TO BE ADDRESSED AND TO PROPERLY COVER THEM IN THE INITIAL SUBMITTAL. THUS, THERE IS A DISCIPLINE IMPOSED UPON THE PERMITEE AS WELL AS THE AGENCY TO ASSURE THAT THE INFORMATION THAT IS PROVIDED IS ADEQUATE TO THE REQUIREMENTS FOR ISSUANCE OF THE PERMIT AND TO PRECEDE THE FORMAL PERMIT APPLICATION WITH DISCUSSIONS WITH THE APPROPRIATE RESOURCE AGENCIES IN ORDER TO STREAMLINE THE DECISION MAKING PROCESS BY THE LEAD AGENCY.

SECOND, IN RESPONSE TO WORRIES THAT HAVE BEEN RAISED THAT THIS DRAFT BILL WOULD ALLOW THE STATE TO RUN ROUGHSHOD OVER LOCAL CONCERNS, I EMPHASIZE THE DISTINCTION BETWEEN THIS BILL, WHICH RELATES TO PERMIT ISSUANCE, AND THE COMPLETELY SEPARATE PROCESS THAT ADDRESSES THE POLICY QUESTION OF WHETHER OR NOT A MAJOR PROJECT SHOULD BE UNDERTAKEN IN THE FIRST PLACE. FOR EXAMPLE, THE ISSUE OF EXPLORATION IN A PARTICULAR FRONTIER AREA WILL BE STUDIED LONG BEFORE THE FIRST PERMIT APPLICATION IS MADE. THERE ARE REQUIREMENTS FOR STUDIES, HEARINGS AND OTHER SUCH ACTIVITIES WHICH PROVIDE INFORMATION TO AND IDENTIFY CONCERNS OF LOCAL COMMUNITIES THAT MAY BE IMPACTED BY THE PROPOSED DEVELOPMENT. FROM THE INFORMATION GAINED IN THIS LENGTHY AND DELIBERATE PROCESS

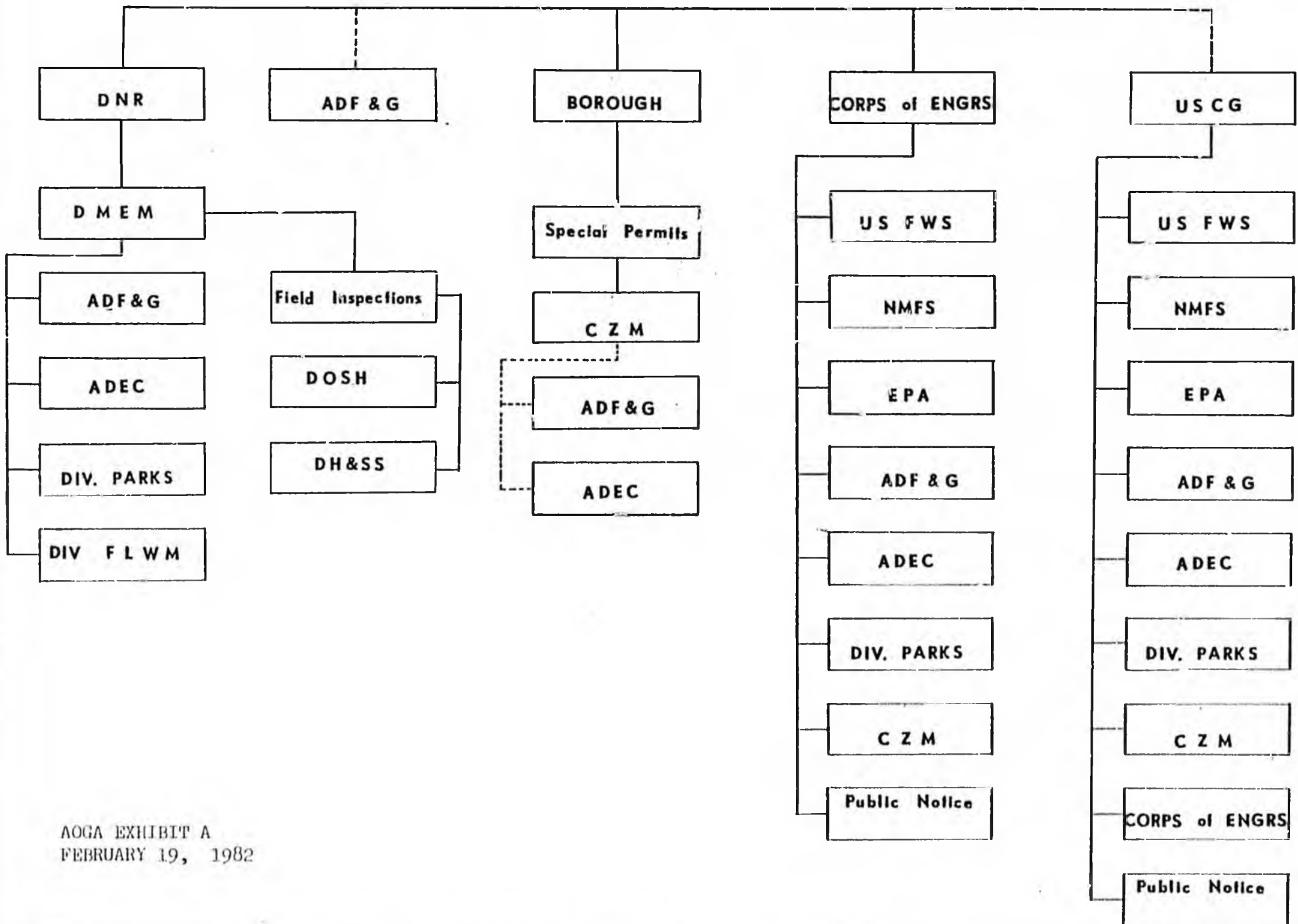
THE STATE WILL MAKE ITS POLICY DECISION REGARDING OIL AND GAS EXPLORATION AND DEVELOPMENT IN A GIVEN AREA. ONCE THAT OVERALL POLICY DECISION HAS BEEN MADE BY THE STATE, FROM THAT POINT ON THE ISSUE SHOULD BE HOW SPECIFIC PERMIT ACTIVITIES (BOTH INDIVIDUALLY AND COLLECTIVELY) AFFECT LOCAL AREAS, NOT WHETHER DEVELOPMENT IS GOING TO OCCUR. THE PERMIT PROCESS ESTABLISHED IN THIS DRAFT BILL IS NOT THE VEHICLE FOR THE STATE TO DECIDE ON BROAD POLICY QUESTIONS. RATHER IT ALLOWS FOR ORDERLY DEVELOPMENT TO PROCEED ONCE THE DEVELOPMENT QUESTION HAS BEEN RESOLVED.

IN SUMMARY, MR. CHAIRMAN, EXXON STRONGLY SUPPORTS THE DRAFT BILL BEFORE YOU TODAY. IN OUR VIEW, IT REPRESENTS A BALANCED APPROACH WHICH PROTECTS THE INTERESTS OF THE STATE OF ALASKA, ITS PEOPLE, AND THE RESOURCE INDUSTRIES. WE URGE ITS PROMPT ADOPTION.

THANK YOU VERY MUCH.

RHW/SPEECH/066/es

# AGENCIES INVOLVED IN OPERATING PERMITS ON STATE LANDS



Original sponsors: Bennett, Parr and  
Fabrenkamp

1 IN THE SENATE

BY THE LABOR AND  
COMMERCE COMMITTEE

2 2d HOUSE CS FOR CS FOR SENATE BILL NO. 84 (LEC)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to processing of permits by state  
7 agencies, and to administration of the Alaska Coastal  
8 Management program."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 \* Section 1. FINDINGS. The legislature finds that

11 (1) the orderly development of state resources is being unneces-  
12 sarily delayed by the length of time required to obtain permits from state  
13 agencies, by the complexity of the permitting process, and by the number of  
14 agencies involved in the permitting process;

15 (2) [the uncertainties created by the lack of specific time limits,  
16 the proliferation of agency reviews, the number of agencies involved in the  
17 permit process, and unjustified agency requirements upon the processing of  
18 permit applications have cost Alaskans millions of dollars in lost employ-  
19 ment and higher prices;

20 (3) the public interest has not been advanced by [protracted] delay  
21 in the processing of permit applications by state agencies;

22 (4) by reducing the number of agencies and agency reviews in-  
23 volved in the permit process, and by requiring state agencies to process  
24 permit applications in an expeditious manner, the social, economic, and  
25 environmental health and well-being of Alaska citizens will be promoted; and

26 (5) there are many administrative orders and similar documents  
27 that have been promulgated by the executive branch relating to interagency  
28 review that conflict and overlap, retarding the permit issuing process.

29 \* Sec. 2. AS 44.62 is amended by adding new sections to read:

1 ARTICLE 8A. PERMIT PROCESSING.

2 Sec. 44.62.632. PERMIT CLASSIFICATION. (a) Each state resource  
3 agency shall by regulation classify each of the permits issued by that  
4 agency within one of the two following categories:

5 (1) class I permits, for which the state agency must issue a  
6 final decision within 30 days after the date of receipt of a completed  
7 permit application; and

8 (2) class II permits, for which, because of a necessary  
9 public notice or interagency review period, a final decision cannot be  
10 issued within 30 days. A final decision on a class II permit must be  
11 issued within 65 days after the date of receipt of a completed permit  
12 application. *unless a public hearing - 85 days*

13 (b) Final regulations classifying its permits, and uniform proce-  
14 dural regulations providing for the processing of these permits, shall  
15 be adopted by each state resource agency by October 1, 1982, following  
16 appropriate notice and hearing. Permits applied for after October 1,  
17 1982 must be issued in accordance with the time periods specified in  
18 (a) of this section, and the provisions of the implementing regulations.

19 Sec. 44.62.633. OTHER REGULATORY REQUIREMENTS FOR PERMIT PROCESS-  
20 ING. (a) Upon a finding by the head of a resource agency that a  
21 permit being considered involves *also - very complex* ~~unusually complex issues~~ so that the  
22 agency cannot render a final decision within the time period specified  
23 in AS 44.62.632(a), the head of the agency may prescribe a time period  
24 within which the final decision will be made. The finding of the head  
25 of the agency may be appealed by the applicant to the superior court  
26 under the Appellate Rules of Procedure. *Upon the applicant and agency agreement* ~~The time period may not be~~  
27 extended more than 120 days beyond the time period specified in AS 44.-  
28 62.632(a).

29 (b) The time period specified in AS 44.62.632(a) may be extended

1 if necessary to facilitate joint processing of a permit application by  
2 state and federal agencies, but only if adherence to the time periods  
3 established in AS 44.62.632(a) would cause an irreconcilable conflict  
4 with a federal statute or regulation.

5 (c) Subject to (a) and (b) of this section and AS 44.62.634,  
6 failure of a resource agency to make a final decision within 30 days  
7 after the receipt of a completed permit application for a class I  
8 permit, or within 65 days after the receipt of a completed permit  
9 application for a class II permit, is approval of the application. In  
10 an appeal of a permit issued by operation of this subsection, the  
11 record shall be considered in the light most favorable to the applicant,  
12 and the permit shall be accorded a presumption of regularity.

13 (d) A state agency may not condition the issuance of a permit  
14 upon the issuance of a permit from another governmental agency.

15 Sec. 44.62.634. ADDITIONAL INFORMATION. (a) If a resource agen-  
16 cy receives a completed permit application that does not contain suffi-  
17 cient information concerning the project's compliance with the agency's  
18 statutes and regulations, the agency shall notify the applicant within  
19 15 days after receipt of a completed permit application for a class I  
20 permit, and within 30 days after receipt for a class II permit.

21 (b) The notification must specify those particular facts or  
22 issues concerning the proposal upon which the agency requires additional  
23 information in order to determine whether the project will conform to  
24 the agency's statutes and regulations.

25 (c) If a timely request under (a) and (b) of this section is  
26 made, the time period specified in AS 44.62.632 is suspended from the  
27 date of request to the date of full compliance with the request.  
28 Subsequent requests for additional information may be made, but must  
29 relate only to new issues raised by the response to the initial noti-

1      fication. Subsequent requests do not extend the time periods specified  
2      in AS 44.62.632.

3            (d) Nothing in this section grants a resource agency the authority  
4      to request information beyond the authority given to it by other sta-  
5      tutes.

6            Sec. 44.62.635. LEAD AGENCY. (e) There is established a lead  
7      agency that is solely responsible for issuing coastal management consis-  
8      tency determinations under AS 46.40 and for preparing and submitting  
9      state comments on federal permit applications. The lead agency is that  
10     resource agency that has principal responsibility for authorizing the  
11     overall activity, including instances where an activity requires permits  
12     from more than one resource agency. For classes of activities for  
13     which no agency with principal responsibility exists the governor shall  
14     designate a resource agency to be a lead agency for each class by  
15     administrative order no later than October 1, 1982. In performing its  
16     functions under this section, the lead agency shall consult with other  
17     resource agencies and with coastal resource districts under AS 46.40.

18            (b) Substantive consideration shall be given to the documented  
19     factual statements or data submitted by resource agencies and to the  
20     office of coastal management within their primary areas of expertise,  
21     and to the documented factual statements or data submitted by coastal  
22     resource districts made under an approved district coastal management  
23     program. The lead agency shall consider opinions, conclusions or  
24     recommendations submitted by the commenting agency, but may, in its  
25     discretion, reach contrary opinions, conclusions or recommendations  
26     according to the evidence received. The lead agency shall then balance  
27     competing factors in reaching its final decision. No resource agency  
28     other than the lead agency has primary expertise in the balancing of  
29     competing factors.

1 (c) No state agency other than the lead agency may comment to a  
2 federal permitting agency.

3 (d) An agency's completion of a review under sec. 401 of the  
4 Clean Water Act (33 U.S.C. sec. 1341) does not constitute that agency  
5 as a lead agency under this section.

6 Sec. 44.62.636. COMMENT PERIOD. A coastal resource district or  
7 state agency that receives a request for comment in connection with a  
8 permit application or plan review being processed by a resource agency  
9 shall submit these comments in accordance with the following schedule:

10 (1) comments on class I permits shall be submitted within 15  
11 days after the agency's receipt of the request;

12 (2) comments on class II permits and federal permits shall  
13 be submitted within 30 days after the agency's receipt of the request;

14 (3) when under AS 44.62.633, the requesting agency has  
15 extended the time periods specified in AS 44.62.632, that agency may  
16 extend the time period specified in this section for up to an additional  
17 30 days.

18 Sec. 44.62.637. ADMINISTRATIVE APPEALS. (a) The uniform proce-  
19 dural regulations adopted under AS 44.62.632(b) must provide for an  
20 administrative appeal from a final decision on a permit application.  
21 The administrative appeal is to the head of the resource agency involved.  
22 Except as provided in this section the procedure is conducted under  
23 AS 44.62.330 - 44.62.630.

24 (b) The administrative appeal must be resolved within 45 days  
25 after the final decision on a permit application, or, if a hearing is  
26 held on the administrative appeal, within 65 days after the final  
27 decision on the permit application.

28 (c) An appeal taken from a decision granting a permit may, but  
29 need not, stay the issuance of the permit.

1 (d) The head of the agency may summarily dismiss an appeal before  
2 the time established in this section, and the dismissal is the final  
3 agency action on the matter.

4 (e) In an appeal from the denial or conditioning of a permit the  
5 head of the agency may, if he determines that the public interest would  
6 be served, grant the permit or remove conditions of the permit until  
7 the appeal is determined.

8 Sec. 44.62.638. REVIEW BY THE SUPERIOR COURT. (a) Judicial  
9 review by the superior court of a final decision issued under AS 44.-  
10 62.532 - 44.62.637 may be had by filing a notice of appeal in the  
11 superior court in accordance with the applicable Rules of Appellate  
12 Procedure. The right to appeal is not affected by the failure to seek  
13 further review under AS 44.62.637. The review is governed by the  
14 provisions of AS 44.62.560(b) - (c) and AS 44.62.570.

15 (b) An appeal taken under this section has preference on the  
16 calendar of civil actions before the court and shall be decided without  
17 unnecessary delay.

18 \* Sec. 3. AS 44.62.640 is amended by adding a new subsection to read:

19 (c) As used in AS 44.62.632 - 44.62.638,

20 (1) "date of receipt" means the date on which a state agency  
21 actually receives a completed application filed in accordance with  
22 agency regulations and at a place identified as appropriate for filing  
23 in the agency's regulations;

24 (2) "permit" means a permit, license, certification, consis-  
25 tency determination, or other authorization or approval issued by a  
26 resource agency as a written document that is required to be obtained  
27 or is solicited from a state agency before the construction or opera-  
28 tion of a project; "permit"

29 (A) does not include the approval of a unit agreement,

1 a unit development plan, or a unit exploration plan, or conveyances  
2 of interest in state land or water;

3 (B) does include all authorizations and approvals,  
4 whether proprietary or regulatory, necessary to undertake a project  
5 under a previously conveyed property interest;

6 (3) "project" means a new activity or expansion or addition  
7 to an existing activity for which permits are required before construc-  
8 tion or operation; "project" does not include pursuing a trade or  
9 profession, providing public health service, or operating a financial  
10 institution;

11 (4) "resource agency" includes the Department of Natural  
12 Resources, the Department of Environmental Conservation, and the Depart-  
13 ment of Fish and Game with respect to permits issued for the protection  
14 of fish habitat or the regulation of state sanctuaries, refuges, and  
15 critical habitat areas.

AMENDMENTS PROPOSED DURING HL&C COMMITTEE MEETING 2/19/82

Re: SB 84

Amendment #1

Main  
motion  
(amendment)

Rep. Randolph moved to amend SB 84 by accepting the draft entitled 2d House CS for CS for Senate Bill No. 84 (L&C).

Amendment #2

amendments  
to amendment

Rep. Rogers moved to amend the amendment to accept the bill with all the governor's proposed amendments.

For: Rogers, Gardiner      Against: Martin, Bylsma, Randolph  
Amendment failed.

Amendment #3

✓ Rep. Rogers moved to accept the governor's proposed amendment #4. (p.5, lines 1-2)  
Motion passed unanimously.

✗ Amendment adopted.

Amendment #4

Rep. Rogers moved to accept the governor's proposed amendment #11.

For: Rogers, Gardiner      Against: Martin, Bylsma, Randolph  
Amendment failed.

Amendment #5

✓ Rep. Rogers moved to accept the governor's proposed amendment #10; Rep. Bylsma objected. Discussion. (p. 6, lines 15-17)

Motion passed unanimously.

✗ Amendment adopted.

Amendment #6

Rep. Rogers moved, p. 6, lines 12-13 of draft CS, delete sentence, "The right to appeal is not affected by the failure to seek further review under AS 44.62.637." There was objection. Discussion.

For: Rogers, Gardiner      Against: Martin, Bylsma, Randolph  
Amendment failed.

Amendment #7

Rep. Rogers moved, p. 5, lines 16 and 17, delete <sup>for</sup> "up to an additional 30 days." and insert, after word "section", ". However, comments submitted under this subsection shall be submitted no later than 30 days prior to the date on which the lead agency must issue a final decision." Asked unanimous consent.

No objection.

✗ Amendment passed.

Amendment #8

Rep. Rogers moved, p. 2, line 12, after word "application.", delete period, and insert ", unless a public hearing is held on the application, in which case a final decision must be issued within 75 days after the date of receipt." Discussion.

For: Rogers, Gardiner, Bylsma      Against: Randolph, Martin  
Amendment passed.

Amendment #9

Rep. Rogers moved, p. 2, line 28, add ", unless the applicant otherwise agrees."

No objection.

Motion passed unanimously.

*should be after line 28*

Amendment #10

Rep. Rogers moved, p. 4, line 6, delete first sentence and insert, after (a), "There are established lead agencies which are solely responsible for issuing coastal management consistency determinations under AS 46.40 and for preparing and submitting state comments on federal permit applications for all projects which involve the disposal of an interest in state land or water or a least one class II permit."

For: Gardiner, Rogers      Against: Randolph, Martin, Bylsma  
Motion failed.

Amendment #11

Rep. Rogers moved the governor's proposed amendment #3.

For: Gardiner, Rogers      Against: Bylsma, Randolph, Martin  
Motion failed.

Amendment #12

Rep. Rogers moved, p. 5, lines 3-5, to delete subsection (d) and insert new subsection (d), using language from governor's proposed amendment #5. Rep. Randolph asked unanimous consent.

No objections.

Motion passed unanimously.

~~Should be lines 1-2, subsection (e)~~

Amendment #13

Rep. Rogers moved, p. 5, lines 22-23, to accept the governor's proposed amendment #7, as revised (see sheet entitled Changes to Proposed Administration Amendments to SB 84): Delete language "Except as provided in this section the procedure is", and insert "Administrative appeals" conducted under "this section are not subject to the procedures in" AS 44.62.330-44.62.630. Rep. Gardiner asked unanimous consent.

For: Rogers, Gardiner      Against: Bylsma, Martin, Randolph  
Motion failed.

Amendment #14

Rep. Rogers moved the committee rescind its action in failing to adopt previous amendment. Discussion.  
Rep. Rogers withdrew his motion.

Amendment #15

Rep. Gardiner moved, p. 1, line 11, the delete word "being" and insert "many times". Discussion.  
For: Gardiner, Rogers                      Against: Bylsma, Randolph, Martin  
Motion failed.

Amendment #16

Rep. Gardiner moved, p. 1, line 15, delete all of line 15 and insert "the unjustified delay of permits by". Discussion.  
Rep. Gardiner withdrew his amendment.

Amendment #17

Rep. Gardiner moved, p. 1, line 15, begin sentence with language, "the unjustified delay of permits caused by".  
For: Gardiner, Rogers                      Against: Martin, Bylsma, Randolph  
Motion failed.

Amendment #18

Rep. Gardiner moved, p. 1, line 10, delete word "protracted", insert word "unnecessary" Discussion.  
For: Gardiner                                      Against: Randolph, Bylsma, Martin  
Motion failed.

Amendment #19

Rep. Randolph moved to pass 2d HCS CSSB84 (L&C) out of committee; motion was withdrawn.

Amendment #20

*Main  
Amendment*

Question was called on main amendment to accept 2d HCS CSSB 84 (L&C) as amended by committee.  
For: Martin, Bylsma, Randolph                      Against: Gardiner  
Motion passed.

Amendment #21

*motion*

Rep. Randolph moved to pass 2d HCS CSSB 84 (L&C) out of committee. Rep. Gardiner asked unanimous consent.  
There was no objection.  
Motion passed unanimously.

Amended - see pages 2, 5, 6 &

Original sponsors: Bennett, Parr and  
Fahrenkamp

BY THE LABOR AND  
COMMERCE COMMITTEE

1 IN THE SENATE

2 2d HOUSE CS FOR CS FOR SENATE BILL NO. 84 (LEC)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to processing of permits by state  
7 agencies, and to administration of the Alaska Coastal  
8 Management program."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 \* Section 1. FINDINGS. The legislature finds that

11 (1) the orderly development of state resources is being unneces-  
12 sarily delayed by the length of time required to obtain permits from state  
13 agencies, by the complexity of the permitting process, and by the number of  
14 agencies involved in the permitting process;

15 (2) the uncertainties created by the lack of specific time limits,  
16 the proliferation of agency reviews, the number of agencies involved in the  
17 permit process, and unjustified agency requirements upon the processing of  
18 permit applications have cost Alaskans millions of dollars in lost employ-  
19 ment and higher prices;

20 (3) the public interest has not been advanced by protracted delay  
21 in the processing of permit applications by state agencies;

22 (4) by reducing the number of agencies and agency reviews in-  
23 volved in the permit process, and by requiring state agencies to process  
24 permit applications in an expeditious manner, the social, economic, and  
25 environmental health and well-being of Alaska citizens will be promoted; and

26 (5) there are many administrative orders and similar documents  
27 that have been promulgated by the executive branch relating to interagency  
28 review that conflict and overlap, retarding the permit issuing process.

29 \* Sec. 2. AS 44.62 is amended by adding new sections to read:

1 ARTICLE 8A. PERMIT PROCESSING.

2 Sec. 44.62.632. PERMIT CLASSIFICATION. (a) Each state resource  
3 agency shall by regulation classify each of the permits issued by that  
4 agency within one of the two following categories:

5 (1) class I permits, for which the state agency must issue a  
6 final decision within 30 days after the date of receipt of a completed  
7 permit application; and

8 (2) class II permits, for which, because of a necessary  
9 public notice or interagency review period, a final decision cannot be  
10 issued within 30 days. A final decision on a class II permit must be  
11 issued within 65 days after the date of receipt of a completed permit  
12 application, unless a public hearing is held on the application, in which case a final decision  
13 must be issued within 75 days after the date of receipt.

14 (b) Final regulations classifying its permits, and uniform proce-  
15 dural regulations providing for the processing of these permits, shall  
16 be adopted by each state resource agency by October 1, 1982, following  
17 appropriate notice and hearing. Permits applied for after October 1,  
18 1982 must be issued in accordance with the time periods specified in  
19 (a) of this section, and the provisions of the implementing regulations.

20 Sec. 44.62.633. OTHER REGULATORY REQUIREMENTS FOR PERMIT PROCESS-  
21 ING. (a) Upon a finding by the head of a resource agency that a  
22 permit being considered involves unusually complex issues so that the  
23 agency cannot render a final decision within the time period specified  
24 in AS 44.62.632(a), the head of the agency may prescribe a time period  
25 within which the final decision will be made. The finding of the head  
26 of the agency may be appealed by the applicant to the superior court  
27 under the Appellate Rules of Procedure. The time period may not be  
28 extended more than 120 days beyond the time period specified in AS 44.-  
29 62.632(a), unless the applicant otherwise agrees.

(b) The time period specified in AS 44.62.632(a) may be extended

1 if necessary to facilitate joint processing of a permit application by  
2 state and federal agencies, but only if adherence to the time periods  
3 established in AS 44.62.632(a) would cause an irreconcilable conflict  
4 with a federal statute or regulation.

5 (c) Subject to (a) and (b) of this section and AS 44.62.634,  
6 failure of a resource agency to make a final decision within 30 days  
7 after the receipt of a completed permit application for a class I  
8 permit, or within 65 days after the receipt of a completed permit  
9 application for a class II permit, is approval of the application. In  
10 an appeal of a permit issued by operation of this subsection, the  
11 record shall be considered in the light most favorable to the applicant,  
12 and the permit shall be accorded a presumption of regularity.

13 (d) A state agency may not condition the issuance of a permit  
14 upon the issuance of a permit from another governmental agency.

15 Sec. 44.62.634. ADDITIONAL INFORMATION. (a) If a resource agen-  
16 cy receives a completed permit application that does not contain suffi-  
17 cient information concerning the project's compliance with the agency's  
18 statutes and regulations, the agency shall notify the applicant within  
19 15 days after receipt of a completed permit application for a class I  
20 permit, and within 30 days after receipt for a class II permit.

21 (b) The notification must specify those particular facts or  
22 issues concerning the proposal upon which the agency requires additional  
23 information in order to determine whether the project will conform to  
24 the agency's statutes and regulations.

25 (c) If a timely request under (a) and (b) of this section is  
26 made, the time period specified in AS 44.62.632 is suspended from the  
27 date of request to the date of full compliance with the request.  
28 Subsequent requests for additional information may be made, but must  
29 relate only to new issues raised by the response to the initial noti-

1 fication. Subsequent requests do not extend the time periods specified  
2 in AS 44.62.632.

3 (d) Nothing in this section grants a resource agency the authority  
4 to request information beyond the authority given to it by other sta-  
5 tutes.

6 Sec. 44.62.635. LEAD AGENCY. (e) There is established a lead  
7 agency that is solely responsible for issuing coastal management consis-  
8 tency determinations under AS 46.40 and for preparing and submitting  
9 state comments on federal permit applications. The lead agency is that  
10 resource agency that has principal responsibility for authorizing the  
11 overall activity, including instances where an activity requires permits  
12 from more than one resource agency. For classes of activities for  
13 which no agency with principal responsibility exists the governor shall  
14 designate a resource agency to be a lead agency for each class by  
15 administrative order no later than October 1, 1982. In performing its  
16 functions under this section, the lead agency shall consult with other  
17 resource agencies and with coastal resource districts under AS 46.40.

18 (b) Substantive consideration shall be given to the documented  
19 factual statements or data submitted by resource agencies and to the  
20 office of coastal management within their primary areas of expertise,  
21 and to the documented factual statements or data submitted by coastal  
22 resource districts made under an approved district coastal management  
23 program. The lead agency shall consider opinions, conclusions or  
24 recommendations submitted by the commenting agency, but may, in its  
25 discretion, reach contrary opinions, conclusions or recommendations  
26 according to the evidence received. The lead agency shall then balance  
27 competing factors in reaching its final decision. No resource agency  
28 other than the lead agency has primary expertise in the balancing of  
29 competing factors.

Except as otherwise required by federal law,

(c) <sup>n</sup> No state agency other than the lead agency may comment to a federal permitting agency.

~~(d) An agency's completion of a review under sec. 401 of the Clean Water Act (33 U.S.C. sec. 1341) does not constitute that agency as a lead agency under this section.~~  
*delete this subsection; replace with attached \* (entitled Amendment 5)*

Sec. 44.62.636. COMMENT PERIOD. A coastal resource district or state agency that receives a request for comment in connection with a permit application or plan review being processed by a resource agency shall submit these comments in accordance with the following schedule:

(1) comments on class I permits shall be submitted within 15 days after the agency's receipt of the request;

(2) comments on class II permits and federal permits shall be submitted within 30 days after the agency's receipt of the request;

(3) when under AS 44.62.633, the requesting agency has extended the time periods specified in AS 44.62.632, that agency may extend the time period specified in this section. *However, comments submitted under this subsection shall be submitted no later than 30 days prior to the date on which the 30-day lead agency must issue a final decision.*

Sec. 44.62.637. ADMINISTRATIVE APPEALS. (a) The uniform procedural regulations adopted under AS 44.62.632(b) must provide for an administrative appeal from a final decision on a permit application. The administrative appeal is to the head of the resource agency involved. Except as provided in this section the procedure is conducted under AS 44.62.330 - 44.62.630.

(b) The administrative appeal must be resolved within 45 days after the final decision on a permit application, or, if a hearing is held on the administrative appeal, within 65 days after the final decision on the permit application.

(c) An appeal taken from a decision granting a permit may, but need not, stay the issuance of the permit.

1 (d) The head of the agency may summarily dismiss an appeal before  
2 the time established in this section, and the dismissal is the final  
3 agency action on the matter.

4 (e) In an appeal from the denial or conditioning of a permit the  
5 head of the agency may, if he determines that the public interest would  
6 be served, grant the permit or remove conditions of the permit until  
7 the appeal is determined.

8 Sec. 44.62.638. REVIEW BY THE SUPERIOR COURT. (a) Judicial  
9 review by the superior court of a final decision issued under AS 44.-  
10 62.632 - 44.62.637 may be had by filing a notice of appeal in the  
11 superior court in accordance with the applicable Rules of Appellate  
12 Procedure. The right to appeal is not affected by the failure to seek  
13 further review under AS 44.62.637. The review is governed by the  
14 provisions of AS 44.62.560(b) - (e) and AS 44.62.570.

15 (b) An appeal taken under this section <sup>should have</sup> ~~has~~ preference on the  
16 calendar of civil actions before the court and <sup>should</sup> ~~shall~~ be decided without  
17 unnecessary delay.

18 \* Sec. 3. AS 44.62.640 is amended by adding a new subsection to read:

19 (c) As used in AS 44.62.632 - 44.62.638,

20 (1) "date of receipt" means the date on which a state agency  
21 actually receives a completed application filed in accordance with  
22 agency regulations and at a place identified as appropriate for filing  
23 in the agency's regulations;

24 (2) "permit" means a permit, license, certification, consis-  
25 tency determination, or other authorization or approval issued by a  
26 resource agency as a written document that is required to be obtained  
27 or is solicited from a state agency before the construction or opera-  
28 tion of a project; "permit"

29 (A) does not include the approval of a unit agreement,

1 a unit development plan, or a unit exploration plan, or conveyances  
2 of interest in state land or water;

3 (B) does include all authorizations and approvals,  
4 whether proprietary or regulatory, necessary to undertake a project  
5 under a previously conveyed property interest;

6 (3) "project" means a new activity or expansion or addition  
7 to an existing activity for which permits are required before construc-  
8 tion or operation; "project" does not include pursuing a trade or  
9 profession, providing public health service, or operating a financial  
10 institution;

11 (4) "resource agency" includes the Department of Natural  
12 Resources, the Department of Environmental Conservation, and the Depart-  
13 ment of Fish and Game with respect to permits issued for the protection  
14 of fish habitat or the regulation of state sanctuaries, refuges, and  
15 critical habitat areas.

\* AMENDMENT 5

Page 5, ls. 3-5.



Delete existing subsection (d) and insert the following:

(d) For activities involving both a disposal of interest in land, or plan of operations approval under a previous disposal, and a certification under sec. 401 of the Clean Water Act (33 U.S.C. sec. 1341), the lead agency shall be the Department of Natural Resources.

# STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K-STATE CAPITOL  
JUNEAU, ALASKA 99811

March 2, 1982

Honorable Terry Martin  
Chairman, House Labor & Commerce  
Committee  
Alaska State Legislature  
Pouch V  
Juneau, Alaska 99811

Re: Hearing on HCS CSSB 84 (L&C)

Dear Representative Martin:

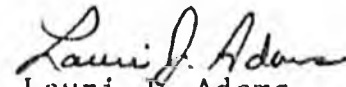
At the last HCS CSSB 84 before your committee, you had expressed an interest in receiving copies of the Administrative Uniform Procedures Regulations which were adopted last year as a means of streamlining the permitting processes in the state in the absence of legislation on the subject. Even though the bill you were considering did pass out of your committee that same day, I thought you might still wish to review the end product of the Administration's regulatory effort. I am therefore enclosing 10 copies of the Uniform Regulations for your review and distribution to others who may also be interested in their content.

If you have any questions regarding the regulations, please don't hesitate to contact us.

Sincerely,

WILSON L. CONDON  
ATTORNEY GENERAL

By:

  
Lauri J. Adams

Assistant Attorney General

LJA:dln

Encls.

AMENDMENT 1

*Costs*

*Expectation of number of public hearings -*

~~AT~~

*Rep Rogers*

Page 2,1.12..

application [.] , unless a public hearing is held on the application,  
in which case a final decision must be issued within <sup>75</sup> 35 days after  
the date of receipt.

AMENDMENT 2

Page 2, ls. 26-28.

~~of~~ *already permitted* *Assesed*  
*that only*

under the Appellate Rules of Procedure. Unless the applicant and the agency otherwise agree, [T]he time period may not be extended more than 120 days beyond the time period specified in AS 44.62.632(a).

AMENDMENT 3

Page 4, lines 6 -- 29

*FF. Files.*

Delete all of sec. 44.62.635(a) and (b) and insert the following in its place:

(a) <sup>*Individ*</sup> There are established lead agencies which are solely responsible for issuing coastal management consistency determinations under AS 46.40 and for preparing and submitting state comments on federal permit applications for all projects

*Consistent with Fed & State current discussion*  
which include the conveyance of an interest in state land or water or at least one class II permit decision.] The lead agency may vary for classes of activities, but shall be that agency that has principal responsibility for authorizing the overall activity. For classes of activities for which no agency with principal responsibility exists the governor shall designate a lead agency by administrative order no later than October 1, 1982. In performing its functions under this section the lead agency shall consult with other resource agencies and with coastal resource districts under AS 46.40. The lead agency shall balance competing factors in reaching its decision. Substantive consideration shall be given to the <sup>*documented or supportive evidence*</sup> comments of resource agencies within their primary areas of expertise.

(b) If a coastal resource district with an approved and applicable district coastal management program appeals the lead agency's consistency determination, AS 44.62.560--44.62.570 govern judicial review. However, notwithstanding

AS 44.62.570(c), abuse of discretion is established if the reviewing court determines that the consistency determination is not supported by a preponderance of the evidence in the administrative record.

OK  
Page 5, ls. 1-2.

Yes -

(c) Except as otherwise required by federal law,  
[N] no state agency other than the lead agency may comment  
to a federal permitting agency.

AMENDMENT 5

Page 5, ls. 3-5.

~~DEC~~  
~~Pub. of~~ ~~the~~ ~~Act~~ Passed

Delete existing subsection (d) and insert the following:

(d) For activities involving both a disposal of interest in land, or plan of operations approval under a previous disposal, and a certification under sec. 401 of the Clean Water Act (33 U.S.C. sec. 1341), the lead agency shall be the Department of Natural Resources.

Page 5, lines 22 - 23.

*No.*

Administrative appeals [EXCEPT AS PROVIDED IN THIS SECTION THE  
PROCEDURE IS] conducted under this section need not comply with  
AS 44.62.330 - 44.62.630.

*Need redrafting.*

*fails*

*See ~~the~~ ...  
line 22 + 23*

Page 5, line 24.

*[Signature]*

(b) Except when applicable due process rights may require more formal administrative proceedings, the [THE] administrative appeal must be resolved within 45 days

*? Dept. of Conservation.*

*Present wording may have to be balanced with Constitu. of state*

*We do have an exception -*

Page 6, ls. 12-13.

~~AB~~ Passed

Procedure. [THE RIGHT TO APPEAL IS NOT AFFECTED BY THE FAILURE TO SEEK FURTHER REVIEW UNDER AS 44.62.637.] The review is governed by the

*Sounds fair*

Page 6, ls. 15-17.

*Self destructive* ↔

*MS-*

(b) An appeal taken under this section [HAS] should have preference on the calendar of civil actions before the court and [SHALL] should be decided without unnecessary delay.

*this allows judges to establish policies?*

OK Yes AMENDMENT 10

Passed

This is a recommendation.  
Wp.

Page 5, ls. 16-17.

extend the time period specified in this section. [FOR UP TO AN  
ADDITIONAL 30 DAYS.]

AMENDMENT 11

Page 7, line 12

~~11~~ 110-

Resources, the Department of Enviromental Conservation, the  
Alaska Coastal Policy Council, and the Depart-

Terry

Would appreciate having you hold the hearing date for  
SB84 ~~open~~ <sup>cancelled -</sup> until after our meeting Tuesday. We can then have  
an idea of the amount of our work necessary to get agreement on  
the thing and will probably ask for you to schedule it the first  
week (or later) in february.

Thanks,

Mike

re-scheduled for

Feb. 11<sup>th</sup> or 15<sup>th</sup>

Brown HB 146  
595

May please call Mike Hershberger on  
finalizing the date.

Ap. Oil & Gas Assoc

1-13-82 - Clerks' office received SB 84 - I am awaiting  
return before calling Mike.

May

THE FOLLOWING DOCUMENT(S) MAY NOT FILM  
LEGIBLY BECAUSE OF POOR QUALITY OF THE  
ORIGINAL.

Sec. 44.62.637. ADMINISTRATIVE APPEALS. (a) The uniform procedural regulations promulgated pursuant to AS 44.62.632(b) shall provide for an administrative appeal from a final decision on a permit application. (b) The appeal must be resolved within 45 days of the final decision, or, if a hearing is held on the appeal, within 65 days of the final decision. Such appeal shall be to the head of the resource agency involved. An appeal taken from a decision granting a permit shall not necessarily stay the issuance of the permit in question. The head of the agency may summarily dismiss an appeal before the time established herein, and such dismissal shall be the final agency action on the matter. If the public interest is so served, in an appeal from the denial or conditioning of a permit the head of the agency may grant the permit or remove conditions thereon pending the outcome of the appeal.

*Last sentence of (a)  
Except as provided in this section the procedure shall  
be conducted under AS 44.62.330 - 44.62.630*

*preferred*

(b) Substantive consideration shall be given to the *factual* comments of resource agencies and to the Office of Coastal Management within their primary areas of expertise, and *also* to the *factual* comments of coastal resource districts made *in writing* ~~pursuant to~~ an approved district coastal management program.

The lead agency shall consider opinions, conclusions or recommendations submitted by the commenting ~~agency~~ *agencies*, but may, in its discretion, reach contrary opinions, conclusions or recommendations according to the evidence received.

The lead agency shall then

balance competing factors in reaching its final decision. No resource agency other than the lead agency has primary expertise in the balancing of competing factors.

# Alternative

(b) Substantive consideration shall be given to the *factual* comments of resource agencies and to the Office of Coastal Management within their primary areas of expertise, and ~~also~~ to the *factual* comments of coastal resource districts made ~~under~~ pursuant to an approved district coastal management program.

~~(5)~~ "substantive consideration" means that, where documented factual statements or data are submitted by a resource agency or a coastal resource district, those statements or data ~~shall be deemed true unless the lead agency or permit applicant~~ *as considered* ~~refutes~~ *the* statements or data ~~by a preponderance of the evidence.~~ *are refuted*

The lead agency shall consider opinions, conclusions or recommendations submitted by the commenting agency, but may, in its discretion, reach contrary opinions, conclusions or recommendations according to the evidence received.

The lead agency shall then

balance competing factors in reaching its final decision. No resource agency other than the lead agency has primary expertise in the balancing of competing factors.

THE PRECEDING DOCUMENT(S) MAY NOT FILM  
LEGIBLY BECAUSE OF POOR QUALITY OF THE  
ORIGINAL.

TO: REP. MARTIN  
FROM: JEANNE SANDE, RT. 1, BOX 1096, KETCHIKAN, AK 99901 PHONE 225-5233  
RE: SB 84

PLEASE HOLD TELECONFERENCE STATEWIDE ON SB 84. IT IS A BILL THE LEAGUE OF WOMEN VOTERS TOOK A POSITION AGAINST, ESPECIALLY CERTAIN SECTIONS, LAST YEAR AND HAS A CONTINUING INTEREST IN IT. IN MY OPINION THE GOVERNOR'S REGULATORY REFORMS MEASURES ARE A MUCH BETTER APPROACH TO REFORMING AND STREAMLINING THE PERMITTING PROCESS. EOM/SLW

TO: REPRESENTATIVE MARTIN  
FROM: BILL SAUL  
SRA 4007-A  
ANCHORAGE 99502 (H) 345-6477 (W) 659-4356  
RE: SB 84

*Saul and  
Let him know when meeting  
is schedule.*

I BELIEVE THAT THE PERMIT PROCEDURE IS ONE EFFICIENT SAFEGUARD AGAINST UNWANTED/UNNEEDED DEVELOPMENT IN ALASKA. I REQUEST THAT A PUBLIC HEARING BE HELD BEFORE THE BILL (SB84) IS BROUGHT UP FOR A VOTE.

*10-82 Tulareville sent @ 8 A.M.  
He will be having a work shop on SB 84 on Friday the 12<sup>th</sup>  
at 1:30 P.M. ~~at~~ your comments <sup>are to be</sup> entered  
into each committee members file.  
Rep. Terry Martin*

# STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K - STATE CAPITOL  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-3600

September 1, 1981

Ray Tyson  
c/o Labor and Commerce Committee  
921 W. 6th Ave.  
Suite 250  
Anchorage, Alaska 99501

Re: Enclosed Material on  
Uniform Procedural Regulations  
and SB 84

Dear Ray:

Enclosed are the materials which I promised you relating to SB 84 and the Uniform Procedural Regulations. These documents are, in order:

1. The Executive Summary of the draft regulations, for which public notice was given in January of this year. The Executive Summary highlights the major issues surrounding the draft regulations which emerged from working sessions held with industry and environmental groups late in 1980;
2. The complete public comment file on the draft regulations;
3. An April 6, 1981 memorandum from myself to Governor Hammond with respect to major issues surrounding the proposed final regulations. In particular, the memorandum addresses the criticism raised by public interest groups that the regulations "balkanize" the State's Coastal Management Program, and give excessive authority to the Department of Natural Resources as a coastal management "lead agency";
4. The final regulations as adopted by the departments of Natural Resources, Environmental Conservation and Fish & Game, and the Alaska Coastal Policy Council, in April of this year. As you are aware, these regulations have not been filed with the Lieutenant Governor's Office because of uncertainty regarding possible permit reform legislation;

5. The Department of Law's analysis of CSSB 84. The analysis addresses the Senate Resources Committee version of the bill;
6. Proposed changes in the Second Rules Committee version of SB 84 discussed at a recent meeting with various AOGA representatives. As the enclosed cover letter to the suggested changes indicates, the primary areas of remaining disagreement between the administration and the oil industry relate to the proper role of local governments in State decision making--at least when the local government has an approved coastal management program--and the length of the administrative appeals process; and
7. Our permit reform mailing list.

Once you have digested these documents, I would be happy to answer any questions you might have. The cabinet has yet to meet on the proposed AOGA changes, and we as well have yet to hear from AOGA as to whether they would be satisfied with a package of legislation and regulations which contain the proposed revisions. For reasons which are self-evident, the changes proposed in the enclosure would be opposed by local governments, as well as by public interest groups in the State. Moreover, many industry groups within the State will likewise object to the changes. As you are aware, the Southeast Alaska timber industry, and the Southeast native corporations, have supported the regulations actively. The primary reason for this support has been the strong role which the regulations envision for local governments with approved coastal management programs. Local/industry relations with respect to the timber industry are generally good. This is also true with respect to certain petrochemical interests in the Kenai Peninsula, which have also supported the regulations. The oil production industry, on the other hand, has been having rather notorious problems with the North Slope Borough, and therefore has taken the position that local governments should have a lesser influence on State decision making, even when that local government has an approved coastal management program. We have attempted, from the outset, to choose a middle ground between merely "considering" local comments on coastal management matters on the one hand, and affording local governments a "veto" on the other.

Ray Tyson

September 1, 1981

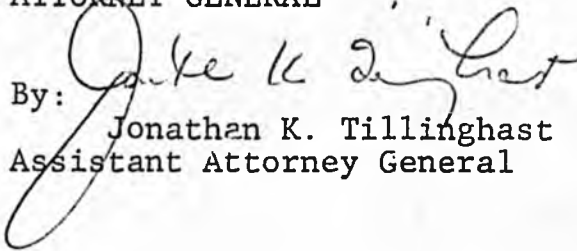
Page 3

I hope these materials are of some help to you,  
and look forward to hearing from you.

Sincerely yours,

WILSON L. CONDON  
ATTORNEY GENERAL

By:

  
Jonathan K. Tillinghast  
Assistant Attorney General

JKT/kh

Enclosures

TESTIMONY OF J. D. BERTINO

CHEVRON U.S.A. INC.

ON

PROPOSED UNIFORM PROCEDURES FOR PERMITS,  
CONSISTENCY DETERMINATIONS AND APPEALS

FEBRUARY 6, 1981

ANCHORAGE, ALASKA

*For an aty.*

My name is J. D. BERTINO. I represent Chevron U.S.A. Inc. I have been employed by Chevron in various positions dealing with governmental regulations for over 23 years. I am an Alaska resident and have been responsible for land and permitting matters for Chevron for almost six years in Alaska. I would like to express our appreciation to you for affording Chevron U.S.A. Inc. the opportunity to comment on the proposed uniform procedural regulations. We hope our comments will be constructive, both to the benefit of the State and our industry.

Chevron appreciates and welcomes any efforts taken by the State to facilitate the processing of permits. However, it is difficult to square an additional fourteen pages of regulations with Governor Hammond's regulatory reform project announced on December 5, 1980. In his opening remarks he stated that too little progress had been made in ensuring that State government is easier to deal with. I quote, "Regulatory Reform efforts run a great risk of becoming either too theoretical, or mired in fundamental political controversy". Governor Hammond indicated his program would be a sincere effort to get government off the backs of our average citizens and our industries.

It is our understanding that the Legislature is presently considering legislation which generally pertains to the permitting process. It appears there is a reasonable probability that some type of permitting legislation will be passed in this session. It is our recommendation that the administration defer action on the proposed regulations until the Legislature has acted. In the event the proposed regulations are adopted, it seems inevitable that these regulations will conflict with any legislation that is passed during the present session. This unnecessary conflict can be avoided by delaying the adoption of any procedural regulations until the Legislature has had an opportunity to act.

However, we submit the following specific comments in the event further consideration is given to the adoption of these regulations at this time.

Sec. 020 provides that the deadline for an agency's processing of a permit may be extended for an indefinite period of time where the agency finds that "substantial complex issues" are involved. We believe that any permit application can be processed within 65 days of the agency's receipt of the application. Accordingly, we recommend

that this portion of Section .020 be deleted. At a minimum, we would suggest that an outside limit as to the amount of time the Commissioner may extend the deadline be inserted; for example, 120 days. Moreover, the regulations should be amended to provide that such certification by a commissioner could only be made upon a finding that extraordinary circumstances warranted such an extension.

Articles 6, 7 and 8 provide for a lengthy and cumbersome administrative appeal process. It is Chevron's position that any satisfactory permitting process must provide for immediate access to the superior court following the agency's initial decision with regard to the permit application. We believe that the availability of this option will insure the agency's careful scrutiny of the application, as well as any suggested stipulations, throughout the permitting process. In view of the current problems with the permitting process, we believe it essential that any disputes between the applicant and the agency be presented to a neutral tribunal at an early date.

The need for a process which provides for an immediate appeal to the judicial system is clear when the effect of even a short delay in the permitting process is considered.

For example, many oil and gas operations are required to be conducted under very rigid seasonal restrictions. If a permit is delayed, the lessee may lose a full year of a lease term.

We have a situation where a lessee has paid a substantial sum for a lease and has an obligation to diligently explore and develop his lease or lose it. Often, a lessee finds himself unable to meet his obligations under the terms of the lease because of a delay in obtaining the required permits or because of conditions imposed under the permitting process which virtually preclude diligent exploration and development. On one hand, we have the lease administrator compelling diligent exploration and development; on the other hand, we have various agencies imposing conditions which make it almost impossible to meet the very obligations required under the terms of the lease. We therefore recommend that Articles 6, 7 and 8 be deleted. Should the applicant desire further agency review, a motion to reconsider the decision can always be filed with the department.

We are also concerned with those provisions of the regulations pertaining to inter-agency review. Sec. 130(c) provides that the deciding agency shall accord "great weight"

to comments of other resource agencies provided such comments are within the commenting agency's "primary area of expertise". On its face, that language would appear to require a deciding agency to defer to a commenting agency's recommendation. This is the basic cause of current problems with the permitting process. The Executive Summary with which we have been provided by the State has attempted to allay such fears by arguing that such recommendations are not within the agency's primary area of expertise. Similarly, Attorney General Condon stated to a Senate Resources Committee work session on January 27 of this year that it was his view the purpose of the language in question was to assure that comments of the other agencies would be considered. Consistent with that statement, and that of the Executive Summary, we would suggest that the definition of "great weight" be couched in terms of "careful consideration" rather than deference.

We also believe that comments of other agencies should be restricted to the manner in which the permitted activity shall occur, rather than whether the activity will be allowed. For example, where a state oil and gas lease has been issued the lessee has a contractual right to conduct operations on the state's land. Recommendations by commenting agencies

that certain activities should not be allowed, even though authorized by the lease, are therefore inappropriate. This is particularly true when it is considered that the concerns of the commenting agencies receive extensive analysis prior to the State's decision to lease.

As acknowledged by the Executive Summary, the proposed regulations do not constrain the degree to which a State agency may influence the approval of federal permit applications which are required to conduct the same or similar activities as also permitted by State agencies. Chevron believes that it is essential that State comments be channeled through the same State agency which has State permitting authority for the activity in question. We can fathom no policy consideration which would allow a State agency to permit a given activity, and simultaneously allow another State agency to block that activity through the federal permitting process. This is particularly true where the commenting agency was previously given a full opportunity to submit detailed comments and supporting rationale to the deciding State agency for the State permit, and then proceeded to require that conflicting conditions be imposed on the same activity through the federal permitting process.

Contrary to the suggestion of the Executive Summary, it is submitted that such a procedure would not relegate the Department of Fish and Game or the Department of Environmental Conservation to a "second class" status. Rather it would assure that such departments are on equal terms with the other permitting departments. No department should be able to block another department's decision via a "back-door" process. The Departments of Fish and Game and Environmental Conservation would retain their ability to monitor performance through their own statutory authority.

We will submit further detailed written comments by February 27, 1981. Thank you for this opportunity to comment.

WRITTEN COMMENTS OF  
CHEVRON U.S.A. INC.  
ON UNIFORM PROCEDURES FOR PERMITS,  
CONSISTENCY DETERMINATIONS AND APPEALS

22AAC 10.020. DEADLINES ON PERMIT ISSUANCE.

Subsection (a)(1) provides for open-ended extension of any permit deadline if the Commissioner certifies that the project involves "substantial complex issues". We believe that any permit application can be processed within 65 days of the agency's receipt of the application. This section undermines the purpose of establishing permit deadlines. Therefore, we recommend that (a)(1) be deleted.

Alternatively, an outside limit should be established so that a deadline cannot be extended for an indefinite period of time. We suggest a maximum extension of 60 days be established. Therefore, the maximum time for processing a class I permit cannot exceed 90 days. The maximum time for processing a class II permit cannot exceed 125 days.

Subsection (a)(4) provides that a deadline may be extended where the deciding agency is processing the application jointly with the federal agency pursuant to a memorandum of understanding. We suggest that this section be deleted. Existing memoranda of understanding should be revised to reflect deadlines established in these regulations.

22AAC 10.030. ADDITIONAL INFORMATION.

This section establishes two time periods during which an agency can request additional information. Upon receipt of an application for either a class I or class II permit the agency should immediately assess whether additional information is necessary in order to process the permit. Assessment should not require more time for class II permits than for class I permits. Therefore, we propose that a 15 day period be established for both classes of permits.

22AAC 10.040. SIGNING OF APPLICATIONS.

Subsection (1) provides that, in the case of corporations, a representative responsible for the "overall management of the project or operation" sign the application. This requirement does not reflect the realities of corporate business transactions in Alaska. Many times the person responsible for the overall management of the project or operation does not work in Alaska and has delegated permitting responsibilities to those who do. Any duly authorized employee of the corporation should be allowed to sign applications. This is consistent with Subsection (4) which allows for any duly authorized employee of a governmental agency to sign applications.

22AAC 10.050. ORAL PUBLIC HEARINGS.

This section creates new and complex requirements for public notice and hearings. These procedures complicate, rather than expedite the permitting process. They are inconsistent with the goal of regulatory reform and will provide a vehicle for attacking decisions made pursuant to these regulations. We propose that public hearings be limited to those required by statute.

22AAC 10.130. INTERAGENCY REVIEW.

This section provides that the deciding agency accord "great weight" to the comments of other resource agencies which meet certain qualifications. As defined in 22AAC 10.920 Subsection (7), "great weight" means deference, unless the assertion is contrary to the weight of fact or opinion in the administrative record. To the extent that certain matters have been statutorily defined as matters of national concern, this requirement may be unlawful. If a deciding agency must defer to the comments of a local agency pursuant to .130(c), the deciding agency may be unlawfully delegating its decision-making functions.

As applied to Coastal Management Consistency Determinations, this would clearly conflict with the mandate of the Coastal Zone Management Act (CZMA). Section 46.40.020(7) of CZMA states "the Alaska Coastal Management program shall be consistent with recognition of the need for a continuing supply of energy to meet the requirements of this State and the contribution of a share of the State's resources to meet national needs." To the extent that these regulations conflict with this mandate by requiring deciding agencies to accord "great weight" or deference to the comments of other resource agencies, they are invalid.

Section .570(b) states that "resource agency" includes coastal resource districts. Thus, the regulations establish a procedure for promoting the concerns of local districts over state or national concerns. We caution the State not to adopt regulations which may require the unlawful delegation of decision making functions to local coastal resources.

22AAC 10.500 ET SEQ. COASTAL MANAGEMENT CONSISTENCY DETERMINATIONS.

The procedures established in Article 5 do not expedite coastal management consistency determinations. The requirement that a deciding agency accord "great weight" to the comments of other resource agencies, and defer to the agency with "primary expertise" if no balancing or competing factors are involved, further complicates an already complex process.

Although the goal of this section appears to be limiting the Coastal Management Consistency Determinations to a one time occurrence, subsections (b) and (c) of .500 defeat this goal. .500(c) provides that an agency may reappraise its prior determination on the basis of new information not available at the prior stage if a more specific consequential activity is being permitted. Subsection (c) undermines the

purpose of subsection (b). The last sentence in subsection (b) states "the scope of any consistency determinations on a more specific activity is limited by the scope of the more specific permit proceeding". This is directly contradicted by subsection (c) which authorizes a reappraisal of prior determinations. Accordingly, we suggest that subsection (c) be deleted.

We oppose the requirement that two consistency determinations be made when certain other activities are undertaken. There is no basis for establishing a more complex procedure for consistency determinations arising from "other activities", therefore, we suggest that subsections (a) and (b) of .550 be deleted. The title should be changed to refer to those activities which do not require consistency determinations.

ARTICLES 6, 7 and 8. APPEALS. 22AAC 10.600, .700, .800 ET SEQ.

Articles 6, 7 and 8 provide for a lengthy and cumbersome administrative appeal process. In order to establish a satisfactory permitting process, immediate access to the Superior Court must follow an agency's initial decision with regard to the permit application. The availability of this option will insure not only the agency's careful scrutiny of the application as well as any suggested stipulations, but the applicant's careful preparation of the application and diligent followup work. In addition, immediate access to Superior Court will greatly shorten the delay that is inherent in the appeal procedure established in these regulations.

Delay is critical when considering the lessee's obligation to diligently explore and develop his lease or possibly lose it. Often, a lessee may find himself unable to meet obligations under the terms of the lease because of a delay in obtaining a required permit or because of conditions imposed under the permitting process which precludes

diligent exploration and development, and therefore must be appealed. Immediate access to judicial review is the only method for resolving the conflict between the lease administrator, who compels diligent exploration and development and the various agencies who may compose conditions which impede the very obligations required by the terms of the lease.

In order to resolve this, we recommend that Articles 6, 7 and 8 be deleted. In their place we suggest the following sections be included in the regulations:

"REVIEW BY THE COMMISSIONER. An agency's final decision issued pursuant to AS 44.62.632 may be reviewed by the commissioner for the issuing agency at the request of the applicant. The request must be filed with the commissioner within thirty (30) days of the applicant's receipt of the decision. The commissioner shall issue a decision within ten (10) days of the department's receipt of the request, unless the applicant has requested a hearing de novo, in which case such hearing shall be held within thirty (30) days of the department's receipt of the request, and the commissioner's decision shall be rendered within thirty (30) days of the conclusion of the hearing. Unless the agency decision is confirmed in its entirety, the commissioner shall issue a written decision setting forth his findings and conclusions in full.

REVIEW BY THE SUPERIOR COURT. (a) Judicial review by the Superior Court of a final decision issued by a state agency pursuant to AS 44.62.632 or 44.62.634 or of a decision of the commissioner issued pursuant to AS 44.62.635, may be had by filing a notice of appeal in the Superior Court in accordance with the applicable rules of appellate procedure. The right to appeal is not affected by the failure to seek reconsideration or further review pursuant to AS 44.62.635. The review shall be governed by the provisions of AS 44.62.560(b)-(e) and AS 44.62.570.

(b) On an appeal by the applicant to the Superior Court, the agency which issued the final decision has the burden of proving that the decision is in accordance with AS 44.62.632 and 44.62.634.

(c) An appeal taken under this section has preference on the calendar of civil actions before the court and shall be decided without unnecessary delay."

Additional Comments:

1. Comments of Other Agencies:

Comments of other agencies should be restricted to the manner in which the permitted activity may occur rather than whether the activity will be allowed to occur at all. Once the State issues an oil and gas lease, the lessee obtains the contractual right to conduct operations on the State's land. Recommendations by commenting agencies that certain activities should not be allowed, even though they are specifically authorized by the lease, are therefore inappropriate and should not be considered. The concerns of commenting agencies receive extensive analysis prior to the State's decision to lease. Once the State decides to schedule an oil and gas lease sale, commenting agencies should not be allowed to undermine this decision by recommending that the activity not be allowed.

2. State Agency Comments on Federal Permit Applications.

Proposed regulations do not constrain the degree to which a state agency may influence the approval of federal permit applications which are required to conduct the same or similar activities permitted by State agencies. State comments must be channeled through the same State agency who has the State permitting authority for the activity in question. There is no valid policy consideration

which would allow a State agency to permit a given activity and simultaneously allow another State agency to block that activity through the Federal permitting process. This is particularly true when the commenting agency was given a full opportunity to submit detailed comments and supporting rationale to the deciding State agency and then proceeds to require that conflicting conditions be imposed on the same activity through the federal permitting process. In order to avoid this problem, the regulations should assure that no department is able to block another departments decision via a "back-door" process.

3. Automatic Approval of Permit Applications.

Conspicuously absent from the proposed regulations is a provision regarding enforcement of the time limits established. In spite of statements by the Department of Law in the Executive Summary, many states, including California, have provided for automatic approval of some permit applications if no action is taken within the applicable time period. We strongly urge the Department of Law to include a section calling for automatic approval of permit applications in this circumstance. Unless permitting agencies face some penalties these regulations will provide little impetus for compliance.

# Alaska Oil and Gas Association

AOGA

505 W. Northern Lights Boulevard  
Suite 219  
Anchorage, Alaska 99503  
(907) 272-1481

December 31, 1980

FINAL

Mr. Jonathan K. Tillinghast,  
Special Assistant Attorney General  
Department of Law  
Pouch K  
State Capitol  
Juneau, Alaska 99811

Re: Draft Uniform Procedures

Dear Mr. Tillinghast:

The Alaska Oil and Gas Association (AOGA) has reviewed the draft Uniform Regulatory Procedures discussed at a meeting with you on December 12, 1980 and has the following comments.

AOGA supports measures which expedite and reform administrative and regulatory procedures. However, after review of the draft regulations, AOGA members have concluded that instead of streamlining and expediting permit procedures, these regulations provide a more complex and cumbersome system. The purpose of regulatory reform is not to enact long-standing, archaic procedures which are neither necessary to the permitting process nor beneficial to the sound development of Alaska's resources. Reform should not require the adoption of an additional 17 pages of regulations.

In addition, AOGA has the following general comments concerning proposals set forth in the proposed Uniform Regulatory Procedures. During late November and the month of December, the state has advised of the proposed adoption of nine different sets of regulations which affect the oil industry. Most of these are new and in addition to existing regulations, thus requiring considerable review time. Because of time constraints, holiday season, and the flood of new proposed regulations, several AOGA members have not had the opportunity to review and develop specific responses to these proposals. From the members who attended your meeting in Juneau on December 12, 1980, our committee was informed that these regulations will be publicly noticed on or about January 9, 1981. If that time schedule has changed, please advise me.

The central problem concerns the lack of administrative guidelines to establish the relationship between the statutory responsibilities of the resource agencies and the implementation of particular state programs such as oil and gas leasing. Until the Administration or the Legislature clearly defines the role of resource agencies in reacting to approved resource programs, no reform at the executive level can be effective.

AOGA makes the following general comments concerning several of the specific proposals set forth in the proposed draft.

1. These regulations do not provide for a direct appeal to the Superior Court for a permit applicant who has been either denied a permit, or a permit condition is attached to which the applicant does not agree. The appeal procedure may be addressed in later regulations; however, any regulations proposed should allow a direct appeal to the Superior Court following the agency's initial decision on the permit application.
2. Since various sections of the regulations allow the commissioner to request additional time, provide public notice, and set a public hearing, in essence every permit application for oil and gas related activities will be a Class II permit. Class II permits provide for a minimum of 65 days review by the agency and in many cases this is not necessary or required to expedite the permitting process.
3. The provisions set forth in AAC 10.020, allowing extension of times, are so broad that effectively there is no deadline set in the permit review process requiring an agency to act. In addition, there are no penalty provisions requiring issuance of a permit if the agencies take more time than set forth in the regulations.
4. There is no provision that precludes the commissioner from making a finding, that as a result of a public hearing, additional time will be necessary to review the permit application. Thus, the commissioner could certify that additional time is necessary after the permit has been the subject of a public hearing.
5. In section 10.030(a) the agency should specify within 10 days of receipt of an application whether the application is complete, and if the application is incomplete specify the data necessary to complete the application. No request for additional information should be made by the agency after the additional information has been supplied by the applicant.

6. In sections 10.030(b) and (c) there should be no extensions of time for reviewing an application which is otherwise complete where the agency is requesting more information than is generally required. If the agency requests additional information that is generally not required, the time constraints imposed on the agency for action should remain the same.
7. Any authorized employee should be allowed to sign a permit application on behalf of a corporation.
8. Public hearings should only be held if required by a statute. The present public notice provisions and opportunities to comment are sufficient to receive diverse comments regarding a project and permit proposal.
9. There should be a specific provision requiring the agency to act, or if the permit application is not approved or denied within the specified time period, the permit should be approved by operation of law. Existing regulations on surface use permits provide for such automatic approval. (See 11 AAC 96.030(b)).
10. Where permits are denied or approved with stipulation, there should be a section which requires the agency to set forth the reasoning and justification for either (a) the denial or (b) the reasons supporting the need for permit stipulations, and whether these permit stipulations are reasonable and necessary. Many permits now being issued contain boiler-plate language or have stipulations which have no application to the permitted activity.
11. All permits should be for the life of the project as proposed by the applicant, and not for a specified term unless such term is required by statute.
12. If a streamlined permitting process is developed, there is no reason for Memorandums of Understanding between various agencies for processing applications. It is not clear why Memorandums are necessary for internal operations of the agencies. Substantial changes have resulted from such internal Memorandums which defeat the intent of established procedures.
13. Regarding AAC 10.130 a commenting agency does not have the full record before it and therefore should not be allowed to recommend denial of a permit. Such a recommendation, when viewed in conjunction with the definition

of "great weight" and the considerable deference given to the commenting agency, will ensure that a permit application will be denied if the commenting agency so recommends. The applicant will not have the ability to provide additional information or data to the lead or deciding agency to refute these comments. This section expands agency jurisdiction without any statutory-enabling legislation. The commenting agency should only be able to set forth reasonable conditions under which the activity proposed by the applicant can be conducted.

14. Regarding Coastal Zone Management - one consistency determination should be made. Once a decision is made to commit state resources for a particular purpose one consistency determination should be made which discusses that determination and resulting projects. For instance, if the state determines that lands should be leased for potential oil and gas exploration and development, one consistency determination should be made at the time the lands are proposed for sale. Later, when leases are purchased, and exploration operations commenced, no additional consistency determination should be required. Also, any state agency reviewing consistency should not be able to impose additional comments or conditions on any federal permit or state permit. The agency should not submit comments which are different from those originally submitted regarding a state permit application before them or where they have been requested to comment on a permit application before another agency.
15. State permitting procedures are not likely to improve until the concept of "a lead agency" having sufficient authority to make permit decisions is adopted. Under present procedures, each decision is fragmented on an equal weight basis as each agency maneuvers to have its concerns assume a dominant role. Broad state and public interest is ignored in the process while the permit issuance is delayed until the last possible moment. These circumstances frequently compel the applicant to accept unwanted, unnecessary and inappropriate stipulations.

Finally, these regulations in some cases expand the authority of agencies in the state and decrease the authority of other agencies. An agency charged with approving a permit or plan of operation is charged and responsible for the disposition of state resources and is required by law to meet certain requirements. These regulations require that agency to delegate much of its authority, and defer to comments of other agencies, which effectively expands the authority of those other agencies.

In conclusion, even though considerable time, personnel and effort has been expended on the drafting of these regulations, regulatory reform can be more effectively accomplished in a simpler manner. Passing legislation which requires agencies to issue or deny permit applications within a specified time period is the initial step in regulatory reform. Agencies should be partners with permit applicants to insure that applications are not denied, that state resources are utilized in a reasonable manner and that applications and permits are granted in the shortest possible time frames by the agency. These regulations do not provide for regulatory reform, but merely attempt to set forth the present permitting procedure into formal regulations. The present permitting procedure is not acceptable and is the basis for the present regulatory reform efforts.

We thank you for the opportunity to review these regulations and if you require further information concerning our comments please advise me.

Very truly yours,



O. K. GILBRETH, JR.  
Exploration and Production  
Affairs Manager

OKG:km

FINAL

TESTIMONY

OF THE

ALASKA OIL AND GAS ASSOCIATION

ON

UNIFORM PROCEDURES FOR PERMITS,  
CONSISTENCY DETERMINATIONS AND APPEALS

FEBRUARY 6, 1981

ANCHORAGE, ALASKA

COMMENTS OF THE  
ALASKA OIL AND GAS ASSOCIATION  
ON  
UNIFORM PROCEDURES FOR PERMITS,  
CONTINGENCY DETERMINATIONS AND APPEALS  
FEBRUARY 6, 1981

Good evening. My name is Don E. Glass and I am with Shell Oil Company in Anchorage. I am here tonight representing the Alaska Oil and Gas Association.

The Alaska Oil and Gas Association is a trade association whose 30 member companies account for the bulk of oil and gas exploration, production and transportation activities in Alaska. Our membership includes the largest and some of the smallest petroleum firms in the industry. AOGA is the Alaska division of the Western Oil and Gas Association.

AOGA is well into the second year of study on regulatory constraints faced by our industry. AOGA supports necessary measures which expedite and reform regulatory procedures. We are supportive of the four goals listed in the Executive Summary, namely:

1. Establishment of the shortest feasible deadline for the issuance of state permits for natural resource development;
2. Establish uniform permit procedures;
3. Explicitly define the rights of the applicant, and other persons in the permitting process; and
4. Streamlining the state's coastal management decision-making process.

We regretfully conclude that these regulations do not achieve these goals. While many existing problems have been alleviated, some have been made worse and others newly introduced. Therefore we are unable to support their adoption without further changes. We believe these regulations contain the following major problems:

1. Complex new requirements are created by these regulations that did not exist before. New public notice, hearing and administrative appeals procedures are established, which can only serve to complicate and delay the processing

of permits. To our knowledge, no complaint has ever been registered with the state concerning the present lack of public notice, hearings and administrative appeals on matters relating to the issuance of permits. Also, new procedures are added which further complicate procedures which are already too complex, and which invite lawsuits over the complexities that are created in these new regulations. For instance, Section 160(3) requires that the agency making a decision must state its reason for the rejection of "any significant and material recommendation made at a public hearing" held under the regulations. Presumably, if this is not done properly, the permit is void. Our belief is that this provision constitutes an easy target for hostile lawyers to attack, since in someone's opinion, virtually anything discussed at a hearing will be "significant and material". On the other hand, it is physically impossible for an agency to respond to everything discussed at a public hearing. Providing complex procedures which are easy targets for lawsuits is not reforming the regulatory process.

2. There is presently a problem concerning the orderly process of making consistency findings under the Alaska Coastal Management Program because several agencies are involved in the matter. We believe that Sections 510 through 550 solve many of these problems, but create others which do not now exist. For example, sections 510 through 540 designate which state agency will make the conclusive consistency determination under most foreseeable circumstances. However, the deciding agency must accord "great weight" (Section 920-7) to the comments of other resource agencies (920-12) and must defer to the agency with "primary expertise" (920-9) if no balancing of competing factors is involved. In many important circumstances this will find the Department of Environmental Conservation or the Department of Natural Resources facing a consistency determination on an activity for which the Division of Policy Development and Planning is recommending consistency denial, and trying to sort out which agency has primary expertise, and whether the situation calls for balancing or automatic deference. To make matters worse, 570(b) by the same token offers a virtual veto power held by local governments over any activity to be permitted on state lands by the State of Alaska. This is not presently the case. We think this is unacceptable.

Without a substantial re-write and simplification, we

3

must remain opposed to adoption of these regulations. Our preliminary recommendations on specific sections of the regulations, as currently proposed, are as follows:

Section 10.020 provides for deadline extensions if provided for in a memorandum of understanding or if the Commissioner finds that complex issues require additional time.

Any memorandum of understanding entered into prior to or pursuant to these regulations should not contain conflicting approval schedules, but rather should provide for approvals within the time frame contained in these regulations.

The provision for extension deadlines due to substantial complex issues is open-ended, and should be granted only in extraordinary circumstances.

Section 10.030 calls for agencies to notify applicants of the need for additional information within 15 days for Class I permits and 30 days for Class II permits. Fifteen days is sufficient for both classes of permits.

Section 10.040 requires an individual responsible for the overall management of a project to sign an application. It is not always possible for that individual to sign an application due to locale, etc. Submittal of an application should not be delayed for this reason; any duly authorized employee should be allowed to sign applications. We note that subsection (4) of this section allows for any duly authorized government employee to sign applications.

Under Section 10.050 public hearings may be held under certain circumstances. We believe that hearings on Class I permits should be held only if required by statute.

Notwithstanding the comment in the Executive Summary, the section on Decision of Applications should include a provision for automatic approval of a permit application if no action is taken by the deciding officer within the applicable time period.

Further to our earlier comment on memorandums of understanding, the regulations need to be clarified under Section 10.085 to reflect that any MOU's in existence upon adoption of the regulations must be either revised to reflect the provision of the Chapter, or withdrawn.

Under Subsection (c) of the Public Notice section, notice must be sent to any unit of local government having jurisdiction

over a proposed activity. In some cases such jurisdiction may be difficult to determine and the inadvertent omission of such notice to one local government later claiming jurisdiction could prejudice the permit. To avoid confusion we would suggest that the section require notice be given to "appropriate units of local government".

In the section on Intra-agency Review it should be noted that agencies should not be allowed to recommend denial of a permit; but rather should make recommendations on what is needed to make the application approvable.

We have several concerns over the consistency article of this chapter.

We propose that the Department of Natural Resources be responsible for consistency determinations associated with state oil and gas lease including any leasing EIS or Federal Permits requiring an EIS. This would support the intent of .520 which calls for DNR to make determinations on disposal of an interest in state land. We also recommend that the Department of Natural Resources, the agency with expertise in oil and gas matters, be responsible for the State's review and consistency determinations for petroleum exploration and development activities in the OCS as well as in State waters.

In most cases the regulations reflect that only one consistency determination will be made; however, as proposed, Section 10.550 would require two consistency determinations to be made for activities not covered in other sections. We would suggest that (a) and (b) of that section be deleted, thereby eliminating the double consistency problem. The title should then be changed to reflect that the section covers activities for which a consistency determination is not necessary.

Section 570(b) provides a description of resource agencies for the purposes of sections .510-.550. including in that description a coastal resource district with an approved CZM plan. The inclusion of a district as a resource agency is unnecessary because once a district plan is approved, it becomes part of the Alaska Coastal Management Program and therefore must be considered by any state agency making a consistency determination. Including a district in the consistency determination process adds yet another layer to the approval process. Given the definition of "great weight" this section apparently authorizes a local district to veto a project which is in the best interest of the state.

Section .580 can require an applicant to submit all applications simultaneously. This would be cumbersome, if not impossible, in some instances. We are recommending in our detailed comments language which would allow consistency determinations to be rendered limited to the scope of the activity and contingent upon an ultimate conclusive consistency determination.

AOGA recommends Articles 6, 7 and 8, and all references to appeals, be deleted from the regulations and instead one article be included stating that an applicant has the right to direct appeal to the Superior Court following the agency's decision on the permit application. The permitting process is vital to our industry and accordingly we believe it is essential that permit issues be resolved through judicial review at an early date.

In the definitions section we would recommend that the definition of "great weight" be changed from meaning "deference" to "serious consideration". Deference provides no latitude to the agency deciding the issue. Further, we would recommend a sentence be added to the definition of "primary area of expertise" calling attention to the fact that any consistency determination includes a "question of balancing factors". Finally, we question why the definition for "feasible and prudent" under the Alaska Coastal Management Act is proposed to be changed. As proposed in these regulations, the definition would not give consideration to economics, which we believe to be an important consideration in determining if an issue is "feasible and prudent".

Finally, we recommend the addition of two new sections, possibly under the deferred Article 4, which we believe would help alleviate the problem of multiple and conflicting state agency comments to federal agencies. The first section calls for the lead agency established under Sections .510-.540 to determine on behalf of the state its comments and recommendations on federal permits and to transmit such policy to the federal agency. The second calls for any state agency commenting upon an activity to address its comments solely to that lead agency.

In summary, we would like to reiterate our support for measures which expedite regulatory process. We are concerned that the regulations, as proposed, create new; complex requirements that do not presently exist. Additionally, while many of the problems over consistency determinations have been resolved, new problems present themselves in the regulations as proposed.

We believe a substantial rewrite of the regulations is necessary to accomplish the goals listed in the Executive Summary of short permit issuance deadlines, uniform procedures, applicants' rights and streamlining of the consistency determination process.

Thank you for the opportunity to comment. Attached to this testimony are our detailed written remarks laying out the changes we have suggested. I will be happy to answer any questions.

DETAILED WRITTEN COMMENTS  
OF THE  
ALASKA OIL AND GAS ASSOCIATION  
ON  
UNIFORM PROCEDURES FOR PERMITS,  
CONSISTENCY DETERMINATIONS AND APPEALS  
FEBRUARY 6, 1981

22 aac 10.020(a)(4)--Delete this subsection. This should not be justification for extending deadlines because any memorandum of understanding entered into prior to or pursuant to these regulations should not contain conflicting approval schedules, but rather should provide for approvals within the time frame contained in these regulations.

22 aac 10.020(b)--Change to read: "(b) A certification under (a) (1) of this section will only be made on a finding of extraordinary circumstances and will specify...". As proposed this provision is open-ended. We believe such certification should be made only under unusual or extraordinary circumstances.

22 AAC 10.030(a)--Change first sentence to read: "...the agency will notify the applicant within 15 days of receipt of a completed application for a Class I or Class II permit." Strike remainder of sentence. Fifteen days is sufficient for both classes of permits.

22 AAC 10.040(1)--Strike "responsible for the overall management of the project or operation". As is the case in (4) any duly authorized employee should be allowed to sign applications.

22 AAC 10.050(a)--Change to read "An oral public hearing on a Class I or Class II permit application will be held if:".

22 AAC 10.050(a)(1)--Change to read: "required by statute; or for Class II permits;".

22 AAC 10.050(b)(1)--Delete "or for Class I permits, likely".

Hearings on Class I permits should be held only if required by statute.

22 AAC 10.060(a)(2)--Delete this subsection. Include a new (2) which would read: "(2) If at the end of the applicable time period the deciding officer has taken no action, the application is deemed approved and the permit granted pursuant to this chapter."

Notwithstanding the comment in the Executive Summary, this section should include a provision for automatic approval if the deciding officer does not act within the specified time period. Existing regulations on surface use permits provide for such automatic approval.

22 AAC 10.085--In second sentence delete "which would" and insert "shall not"; end sentence after the word "chapter" and delete the remainder of the section. Add a new sentence to read: "All existing memoranda of understanding must be revised to reflect the provisions of this chapter." Any MOU's entered into by agencies should comply with the requirements of this chapter. All existing MOU's should either be revised to comply with the chapter, or withdrawn.

22 AAC 10.100(d)--Delete this subsection. See our comments on ARTICLES 6, 7 and 8.

22 AAC 10.120(c)--Change to read: "A copy of the notice will be sent to appropriate units of local government." Delete remainder of sentence. In some cases such jurisdiction may be difficult to determine and the inadvertent omission of such notice to one local government later claiming jurisdiction could prejudice the permit.

22 AAC 10.130(b)--In second sentence delete the words "denial of the permit, or". Agencies should not be allowed to recommend denial of permits; rather they should make recommendations on what is needed to make applications approvable.

22 AAC 10.160(3)--Change to read: "a statement of the factual or judgmental basis for the rejection of any significant and material resource agency recommendation under sec. 130(b) of this chapter, or, in the discretion of the Commissioner, any recommendation made at a public hearing held under sec. 50 of this chapter." This suggestion is made to provide flexibility to the Commissioner in responding to recommendations made at public hearings. Responding to each and every recommendation made at public hearings is an impossible task and should not be required.

ARTICLE 4.--Add two new sections:

"22 AAC 10.400. Where a federal permit is also issued on an activity for which a consistency determination will be made by a lead agency established under Sections .510-.540, the state agency conducting the consistency determination for the state pursuant to these regulations shall have sole authority to determine on behalf of the state its comments and recommendations on the matter (including but not limited to consistency with the ACMP) and to communicate such policy on behalf of the state to the federal agency issuing such a permit.

22 AAC 10.410. All state agencies commenting upon such an activity shall address their comments solely to the lead agency established under Sections .510-.540."

The addition of these two new sections would alleviate the problem of multiple and conflicting state agency comments to federal agencies.

22 AAC 10.510--Change first sentence to read: "When a direct federal activity or a federal permit or license requiring a State consistency determination necessitates preparation of an Environmental Impact Statement under 42 U.S.C. § 4332, except pertaining to state oil and gas leases, the Office of the Governor, Division...". At the end of the second sentence, add "excluding oil and gas activities".

22 AAC 10.520--Change first sentence to read: "Consistency determinations on disposals of an interest in state land will be performed by the Department of Natural Resources, including a joint state/federal oil and gas lease sale where an EIS is required." At the end of the second sentence, add "including associated federal permits requiring an EIS."

The changes suggested in .510 and .520 are intended to make clear that the Department of Natural Resources is responsible for consistency determinations associated with disposals of interest in state lands, including any EIS or Federal permits requiring an EIS.

Add new sentence to read: "The Department will conduct the consistency determination on oil and gas activities occurring in the Outer Continental Shelf adjacent to Alaska."

22 AAC 10.550--Delete (a) and (b); Change title to read: ACTIVITIES NOT REQUIRING A CONSISTENCY DETERMINATION. As proposed, this section would require that two consistency determinations be made for activities not covered by previous sections. This is not in keeping with the intent of these regulations.

22 AAC 10.570(b)--Delete this subsection. Including a coastal resource district with an approved CZM plan in the description of a resource agency adds another layer to the approval process and authorizes a local district to veto a project which is in the best interests of the State. See also our comments on .920(12).

22 AAC 10.580--Change this section to read: "When an activity requires more than one permit, the applicant, in order to obtain a conclusive determination under secs. 510-540 of this chapter, should apply for the appropriate permit under those sections prior to or contemporaneous with application for any other necessary federal permit or license. If an applicant applies for a federal license or permit prior to applying for a state permit which would provide the proper forum for a conclusive consistency determination under secs. 510-540 of this chapter, the designated lead agency may render a consistency determination which is limited to the scope of the activity contemplated by the federal license or permit and contingent upon the issuance of an ultimate conclusive consistency determination. Thereafter, an applicant may either submit application for additional federal licenses or permits and obtain further non-conclusive consistency determinations, or may apply for the appropriate state permit under secs. 510-540 and obtain a conclusive consistency determination."

As proposed, this section could require an applicant to submit all applications simultaneously, which would be cumbersome, if not impossible in some cases.

ARTICLES 6, 7 and 8. Delete these articles. An applicant must have the right to direct appeal to the Superior Court following an agency's decision on a permit application.

22 AAC 10.920 (a)--Delete this subsection pursuant to deletion of ARTICLES 6, 7 and 8 pertaining to appeals.

22 AAC 10.920 (7)--Change "deference" to "serious consideration". Deference provides no latitude to the agency deciding the issue.

22 AAC 10.920 (9)--Add a new third sentence to read "Any consistency determination made by lead agencies hereby is defined to include "questions of balancing factors". The balancing process should be employed when agencies determine consistency.

22 AAC 10.920 (12)--Add a new sentence at the end of this section to read "For the purposes of section .570 of these regulations, the term also includes all state agency members of the Alaska Coastal Policy Council." This sentence is moved from Sec. 570(b).

6 AAC 80.900 (20)--We question why this definition is proposed for change. As proposed, the definition would not give consideration to economics, which we believe to be an important consideration in determining if an issue is "feasible and prudent". We suggest leaving the definition as it now appears in the ACMP.

# Alaska Oil and Gas Association



505 W. Northern Lights Boulevard  
Suite 219  
Anchorage, Alaska 99503  
(907) 272-1481

February 26, 1981

FINAL

Alaska Department of Law  
Attn: Special Assistant Attorney  
General Jon K. Tillinghast  
Pouch K, State Capitol  
Juneau, Alaska 99811

Gentlemen:

Attached are additional written comments of the Alaska Oil and Gas Association on the proposed Uniform Procedures for Permits, Consistency Determinations and Appeals.

We appreciate this opportunity to submit comments.

Very truly yours,

A handwritten signature in cursive script that reads "W. W. Hopkins". The signature is written in dark ink and includes a long, sweeping horizontal stroke at the end.

WILLIAM W. HOPKINS  
Executive Director

Attachment

WRITTEN COMMENTS  
OF THE  
ALASKA OIL AND GAS ASSOCIATION  
ON  
UNIFORM PROCEDURES REGULATIONS

On February 6, 1981 the Alaska Oil and Gas Association presented comments on the Proposed Uniform Procedures Regulations at the public hearing held in Anchorage. A copy of that testimony is attached for your reference.

We would like to take this opportunity to submit additional written comments on the proposed procedures.

As stated in our previous testimony, the Alaska Oil and Gas Association feels a substantial re-write of the proposed regulations is necessary if the State is to achieve the four goals set out in the Executive Summary accompanying the regulations. As proposed, the regulations alleviate many existing problems; however new, more complex requirements are created that do not presently exist.

We note that the Legislature has under consideration legislation pertaining to the permitting process. If the proposed regulations are adopted, the possibility exists that the regulations will conflict with any legislation that is passed. To avoid the possibility of an unnecessary conflict, adoption of the proposed regulations should be deferred until the Legislature has acted.

We have the following additional comments on specific portions of the proposed regulations.

22. AAC 10.050 Oral Public Hearings

In our earlier detailed comments we suggested changes to this section to reflect our recommendation that public hearings on Class I permits should be held only if required by statute. Upon reflection, we believe a "cleaner" way to reflect this intent would be as follows:

Change (a) to read: (a) An oral public hearing on a Class I permit application will be held if required by statute.

Create a new (b) to read: (b) An oral public hearing on a Class II permit application will be held if:

- (1) required by statute; or...."

The remainder of the section would require renumbering.

In the existing section (b)(1)--which would become (c)(1)--delete: "or, for Class I permit, likely".

In the existing section (c)--which would become (d)--change the reference to section (a)(2) to (b)(1).

11 AAC 10.500(c)

Delete this section. The regulation appears to allow an agency to reverse a prior consistency determination. To the extent that the original consistency determination had been relied upon by an operator, a subsequent reversal of that determination would be unlawful. Moreover, subsection (c) is in conflict with (b) which provides that "...a consistency determination on a more specific consequential activity is bound by those decisions, findings and conclusions actually made at prior, less specific decision-making stages." It is not at all clear how an agency is bound by its prior determination if that determination can be reversed.

Articles 6, 7 and 8 Appeals

In our comments made at the hearing we recommended the deletion of the lengthy appeals procedure provided for in the regulations. The permitting process is vital to our industry and it is imperative that permit issues be resolved at an early date. In place of ARTICLES 6, 7, and 8, we recommend the following:

ARTICLE 6. APPEALS

22 AAC 10.600 Review by the Commissioner

An agency's final decision issued pursuant to this chapter may be reviewed by the Commissioner of the issuing agency at the request of the applicant. The request must be filed with the Commissioner within thirty (30) days of the applicant's receipt of the decision. The Commissioner shall issue a decision within ten (10) days of the Department's receipt of the request, unless the applicant has requested a hearing de novo, in which case such hearing shall be held within thirty (30) days of the Department's receipt of the request, and the Commissioner's decision shall be rendered within thirty (30) days of the conclusion of the hearing. Unless the agency decision is confirmed in its entirety, the Commissioner shall issue a written decision setting forth his findings and conclusions in full.

22 AAC 10.610 Review by the Superior Court

(a) Judicial review by the Superior Court of a final decision issued by a state agency pursuant to this chapter or of a decision of the Commissioner issued pursuant to sec. 600 may

be had by filing a notice of appeal in the Superior Court in accordance with the applicable rules of appellate procedure. The right to appeal is not affected by the failure to seek reconsideration or further review pursuant to sec. 600.

Thank you for the opportunity to comment.

COMMENTS BY ARCO ALASKA, INC.  
ON UNIFORM PROCEDURES FOR PERMITS,  
CONSISTENCY DETERMINATIONS AND APPEALS

INTRODUCTION

ARCO Alaska, Inc., (ARCO) is a wholly owned subsidiary of Atlantic Richfield Company. We appreciate the opportunity to present these written comments to the Departments of Natural Resources, Environmental Conservation, and Fish and Game; the Alaska Coastal Policy Council, and Boards of Fisheries and Game. ARCO supports any efforts to modify and streamline the regulatory process to respond to the needs of the regulated community. Streamlining the regulatory process should mean the elimination of duplicative and unnecessary requirements and procedures which provide no benefits either to the regulated community or to the general public.

The agencies and drafters should be complimented on the attempt to draft uniform procedures and implement a system which defines the rights of an applicant and the general public in the permitting process; however, upon review of the proposed regulations, it is apparent that in many cases the proposed regulatory procedures do not accomplish these goals. Regulatory reform, by its nature, should not create an additional bureaucratic structure which is not responsive to the applicant, and does not provide a more simplified process of permitting.

The following is a list of specific comments on the various sections of the Uniform Regulatory Procedures and the Appeals Provisions. These suggested modifications will provide a more streamlined system if these procedures are adopted.

1. 22 AAC 10.020(3). This section which allows the commissioner to extend the permit deadline where the agency and the applicant mutually agree should be deleted. The commissioner would already be empowered, under 22 AAC 10.020(1), to extend the permit deadline when substantially complex issues are involved. This additional opportunity to extend permit deadlines invites abuse; an applicant would feel compelled to agree to any extension requested by an agency rather than risk an unfavorable decision on the permit.

2. 22 AAC 10.030(a). For a Class II permit application, if an agency requests additional information, this request should be made within fifteen (15) days of receipt of the application, rather than the thirty days set forth in the proposed regulations. A thirty-day period to return the permit application is almost half the permitting period. If additional information is required, it should be transmitted to the permit applicant as quickly as possible. This will enable a permit applicant to supply the information which is necessary to the permitting process and still allow the agency sufficient time to review the permit application.

3. 22 AAC 10.030(a). A deciding agency should not be able to toll the permitting period where the information requested of the permit applicant is atypical from that normally requested. If the permit applicant fails to supply information normally submitted for a permit of that nature, then the time period should be tolled until the information is received.

4. 22 AAC 10.040. Any duly authorized representative of a corporation should be authorized to sign the permit application on behalf of the corporation. Often the party responsible for the overall management of the project or its operation is in another location or not available to sign the application form.

5. 22 AAC 10.050. Since Class I permits will require the least amount of time for both the applicant and the agency, an oral public hearing should be held on a Class I permit only when required by statute.

6. 22 AAC 10.085. Memoranda of Understanding with federal agencies may be necessary to implement procedures for interaction between the state agency and the federal agency; however, no Memorandum of Understanding should extend the time provisions or obligations set forth in these regulations. One of the purposes of uniform regulatory procedures is to design a uniform system which will not be deviated from by a Memorandum with another agency.

7. 22 AAC 10.130(b). A commenting agency should never recommend denial of a permit application to a deciding

agency. The commenting agency is requested to respond by the deciding agency to a permit application. The commenting agency has neither the whole record before it, nor all the evidence on whether to grant or to deny a permit application. The commenting agency may recommend inclusion of terms and conditions on the permit. The deciding agency's obligations are to review all of the factors and determine whether the project, as proposed by the applicant, should be approved.

8. 22 AAC 10.150. When the employee prepares a summary of an ex parte oral communication with an applicant, a copy of this summary should be transmitted to the applicant.

9. 22 AAC 10.160(3). The deciding agency's final decision should address the factual and judgmental basis for rejecting a commenting agency's recommendations. However, the deciding agency should only be required to summarize the comments submitted at a public hearing and the agency's action or determination concerning the comments. To require the deciding agency to individually state and respond to the factual and judgmental basis for rejecting a "significant and material recommendation" is overly burdensome. Adequate reasoning for the deciding agency's decision will provide sufficient response to questions presented at a public hearing.

10. 22 AAC 10.920(7) - Great Weight]. This definition should be changed so that "great weight" does not mean deference to the commenting agency. This definition, when used

in conjunction with the commenting agency's right to recommend denial of a permit application, would eliminate the authority of the deciding agency to grant an application which may be in the best interests of the state, but which has been recommended for denial by another agency. The addition of serious consideration or similar language would provide the assurance that necessary attention is given to comments of resource agencies.

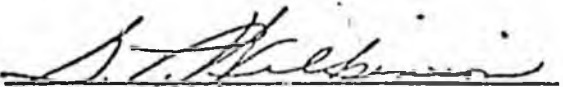
11. The General Appeals provisions should allow the applicant the opportunity to directly appeal to the Superior Court if a permit application is denied, or if unreasonable and unsupportable conditions are attached to the permit. Since time can be extremely critical, the applicant should be able to seek judicial relief at the earliest possible date from a final agency decision.

12. The proposed regulations do not establish a lead agency concept, or resolve the permitting problem where agency comments are made to both a state and federal agency. As noted in the Executive Summary, (p. 14) the problem is not easily solved. One method to alleviate part of the problem is to require the commenting agency to limit the conditions it requests be imposed on a federal permit to those imposed on a state permit required for the same or substantially similar activity. This would eliminate two sets of differing conditions on similar state/federal permits.

CONCLUSION

The resource agencies and the Department of Law should be complimented on their effort to set forth a uniform permitting procedure in the State. Much of the success of the uniform regulatory program will be in its acceptance and implementation both by the regulatory community and the resource agencies. These regulations should be reviewed in a year to determine whether regulatory reform has been successful. The effort expended in regulatory reform is by no means complete. The next year will indicate whether more changes are needed to allow the resource agency to provide timely responses to the permit applicants. Every day's additional delay in permit approval can mean a substantial increase in the cost of the project. These costs can be alleviated through cooperation between the regulated community and the resource agencies.

RESPECTFULLY SUBMITTED this 25th day of February,  
1981.

  
G. T. Wilkinson  
Vice President

TESTIMONY OF J. D. BERTINO .

CHEVRON U.S.A. INC.

ON

PROPOSED UNIFORM PROCEDURAL REGULATIONS

FEBRUARY 6, 1981

ANCHORAGE, ALASKA

My name is J. D. BERTINO. I represent Chevron U.S.A. Inc. I would like to express our appreciation to you for affording Chevron U.S.A. Inc. the opportunity to comment on the proposed Uniform Procedural Regulations. We hope our comments will be constructive, both to the benefit of the State and our industry.

Chevron is appreciative of any efforts taken by any agency which tend to facilitate the processing of permits. Chevron thus welcomes the efforts of the state which are reflected in the proposed uniform procedures for permits.

It is our understanding that the legislature is presently considering legislation which generally pertains to the permitting process. It appears there is a reasonable probability that some type of permitting legislation will be passed in this session. It is our recommendation that the administration defer action on the proposed regulations until the legislature has acted. In the event the proposed regulations are adopted, it seems inevitable that these regulations will conflict with any legislation that is passed during the present session. This unnecessary conflict can be avoided by delaying the adoption of any procedural regulations until the legislature has had an opportunity to act.

However, we submit the following specific comments in the event further consideration is given to the adoption of these regulations at this time.

Sec. 020 provides that the deadline for an agency's processing of a permit may be extended for an indefinite period of time where the agency finds that "substantial complex issues" are involved. We believe that any permit application can be processed within 65 days of the agency's receipt of the application. Accordingly, we recommend that this portion of Section .020 be deleted. At a minimum, we would suggest that an outside limit as to the amount of time the Commissioner may extend the deadline to be inserted; for example, 120 days. Moreover, the regulations should be amended to provide that such certification by a commissioner could only be made upon a finding that extraordinary circumstances warranted such an extension.

Articles 6, 7 and 8 provide for a lengthy and cumbersome administrative appeal process. It is Chevron's position that any satisfactory permitting process must provide for immediate access to the superior court following the agency's initial decision with regard to the permit application. We believe that the availability of that option will insure the agency's careful scrutiny of the application, as well as any suggested stipulations, throughout the permitting process. In view of the current problems with the permitting process, we believe it essential that any disputes between the applicant and the agency be presented to a neutral tribunal at an early date.

The need for a process which provides for an immediate appeal to the court system is apparent when the effect of even a short delay in permitting process is considered. For example, many oil and gas operations are required to be conducted under very rigid season restrictions. If a permit is delayed, the lessee may lose a full year of a lease term.

Often, a lessee finds himself unable to meet his obligations under the terms of the lease because of a delay in obtaining the actual permit or because of conditions imposed under the permitting process which virtually preclude diligent exploration. On one hand, we have the lease administrator telling us to perform or move on; on the other hand we have agencies imposing conditions which make it almost impossible to meet the very obligations required under the terms of the lease. We would therefore recommend that Articles 6, 7 and 8 be deleted. Should the applicant desire further agency review, a motion to reconsider the decision can always be filed with the department.

We are also concerned with those provisions of the regulations pertaining to inter-agency review. Sec. 130(c) provides that the deciding agency shall accord "great weight" to comments of other resource agencies provided such comments are within the commenting agency's "primary area of expertise". On its face, that language would appear to require a

deciding agency to defer to a commenting agency's recommendation. This is the basic cause of current problems with the permitting process. The Executive Summary with which we have been provided by the state has attempted to allay such fears by arguing that such recommendations are not within the agency's primary area of expertise. Similarly, Attorney General Condon stated to a Senate Resources Committee work session on January 27 of this year that it was his view that the purpose of the language in question was to assure that comments of the other agencies would be considered. Consistent with that statement, and that of the Executive Summary, we would suggest that the definition of "great weight" be couched in terms of "careful consideration" rather than deference.

We also believe that comments of other agencies should be restricted to the manner in which the permitted activity shall occur, rather than whether the activity will be permitted. For example, where a state oil and gas lease has issued, the lessee has a contractual right to conduct operations on the state's land. Recommendations by commenting agencies that certain activities should not be allowed, even though required by the lease, are therefore inappropriate.

As acknowledged by the Executive Summary, the proposed regulations do not constrain the degree to which a state agency may comment upon federal permit applications. Chevron believes that it is essential that state comments be channeled through the same state agency which has state permitting authority for the activity in question. We can fathom no policy consideration which would allow a state agency to permit a given activity, and simultaneously allow another state agency to block that activity through the federal permitting process. This is particularly true where the commenting agency was given a full opportunity to submit detailed comments and supporting rationale to the deciding state agency.

Contrary to the suggestion of the Executive Summary, it is submitted that such a procedure would not relegate the Department of Fish and Game or the Department of Environmental Conservation to a "second class" status. Rather it would assure that such departments are on equal terms with the other permitting departments. No department should be able to block another department's intent via a "back-door" process. The Departments of Fish and Game and Environmental Conservation would retain their ability to monitor performance through their own statutory authority.

We will submit further detailed written comments by February 27. Thank you for this opportunity to comment.

WRITTEN COMMENTS OF  
CHEVRON U.S.A. INC.  
ON UNIFORM PROCEDURES FOR PERMITS,  
CONSISTENCY DETERMINATIONS AND APPEALS

22AAC 10.020. DEADLINES ON PERMIT ISSUANCE.

Subsection (a)(1) provides for open-ended extension of any permit deadline if the Commissioner certifies that the project involves "substantial complex issues". We believe that any permit application can be processed within 65 days of the agency's receipt of the application. This section undermines the purpose of establishing permit deadlines. Therefore, we recommend that (a)(1) be deleted.

Alternatively, an outside limit should be established so that a deadline cannot be extended for an indefinite period of time. We suggest a maximum extension of 60 days be established. Therefore, the maximum time for processing a class I permit cannot exceed 90 days. The maximum time for processing a class II permit cannot exceed 125 days.

Subsection (a)(4) provides that a deadline may be extended where the deciding agency is processing the application jointly with the federal agency pursuant to a memorandum of understanding. We suggest that this section be deleted. Existing memoranda of understanding should be revised to reflect deadlines established in these regulations.

22AAC 10.030. ADDITIONAL INFORMATION.

This section establishes two time periods during which an agency can request additional information. Upon receipt of an application for either a class I or class II permit the agency should immediately assess whether additional information is necessary in order to process the permit. Assessment should not require more time for class II permits than for class I permits. Therefore, we propose that a 15 day period be established for both classes of permits.

22AAC 10.040. SIGNING OF APPLICATIONS.

Subsection (1) provides that, in the case of corporations, a representative responsible for the "overall management of the project or operation" sign the application. This requirement does not reflect the realities of corporate business transactions in Alaska. Many times the person responsible for the overall management of the project or operation does not work in Alaska and has delegated permitting responsibilities to those who do. Any duly authorized employee of the corporation should be allowed to sign applications. This is consistent with Subsection (4) which allows for any duly authorized employee of a governmental agency to sign applications,

22AAC 10.050. ORAL PUBLIC HEARINGS.

This section creates new and complex requirements for public notice and hearings. These procedures complicate, rather than expedite the permitting process. They are inconsistent with the goal of regulatory reform and will provide a vehicle for attacking decisions made pursuant to these regulations. We propose that public hearings be limited to those required by statute.

22AAC 10.130. INTERAGENCY REVIEW.

This section provides that the deciding agency accord "great weight" to the comments of other resource agencies which meet certain qualifications. As defined in 22AAC 10.920 Subsection (7), "great weight" means deference, unless the assertion is contrary to the weight of fact or opinion in the administrative record. To the extent that certain matters have been statutorily defined as matters of national concern, this requirement may be unlawful. If a deciding agency must defer to the comments of a local agency pursuant to .130(c), the deciding agency may be unlawfully delegating its decision-making functions.

As applied to Coastal Management Consistency Determinations, this would clearly conflict with the mandate of the Coastal Zone Management Act (CZMA). Section 46.40.020(7) of CZMA states "the Alaska Coastal Management program shall be consistent with recognition of the need for a continuing supply of energy to meet the requirements of this State and the contribution of a share of the State's resources to meet national needs." To the extent that these regulations conflict with this mandate by requiring deciding agencies to accord "great weight" or deference to the comments of other resource agencies, they are invalid.

Section .570(b) states that "resource agency" includes coastal resource districts. Thus, the regulations establish a procedure for promoting the concerns of local districts over state or national concerns. We caution the State not to adopt regulations which may require the unlawful delegation of decision making functions to local coastal resources.

22AAC 10.500 ET SEQ. COASTAL MANAGEMENT CONSISTENCY DETERMINATIONS.

The procedures established in Article 5 do not expedite coastal management consistency determinations. The requirement that a deciding agency accord "great weight" to the comments of other resource agencies, and defer to the agency with "primary expertise" if no balancing or competing factors are involved, further complicates an already complex process.

Although the goal of this section appears to be limiting the Coastal Management Consistency Determinations to a one time occurrence, subsections (b) and (c) of .500 defeat this goal. .500(c) provides that an agency may reappraise its prior determination on the basis of new information not available at the prior stage if a more specific consequential activity is being permitted. Subsection (c) undermines the

purpose of subsection (b). The last sentence in subsection (b) states "the scope of any consistency determinations on a more specific activity is limited by the scope of the more specific permit proceeding". This is directly contradicted by subsection (c) which authorizes a reappraisal of prior determinations. Accordingly, we suggest that subsection (c) be deleted.

We oppose the requirement that two consistency determinations be made when certain other activities are undertaken. There is no basis for establishing a more complex procedure for consistency determinations arising from "other activities", therefore, we suggest that subsections (a) and (b) of .550 be deleted. The title should be changed to refer to those activities which do not require consistency determinations.

ARTICLES 6, 7 and 8. APPEALS. 22AAC 10.600, .700, .800 ET SEQ.

Articles 6, 7 and 8 provide for a lengthy and cumbersome administrative appeal process. In order to establish a satisfactory permitting process, immediate access to the Superior Court must follow an agency's initial decision with regard to the permit application. The availability of this option will insure not only the agency's careful scrutiny of the application as well as any suggested stipulations, but the applicant's careful preparation of the application and diligent followup work. In addition, immediate access to Superior Court will greatly shorten the delay that is inherent in the appeal procedure established in these regulations.

Delay is critical when considering the lessee's obligation to diligently explore and develop his lease or possibly lose it. Often, a lessee may find himself unable to meet obligations under the terms of the lease because of a delay in obtaining a required permit or because of conditions imposed under the permitting process which precludes

diligent exploration and development, and therefore must be appealed. Immediate access to judicial review is the only method for resolving the conflict between the lease administrator, who compels diligent exploration and development and the various agencies who may compose conditions which impede the very obligations required by the terms of the lease.

In order to resolve this, we recommend that Articles 6, and 8 be deleted. In their place we suggest the following sections be included in the regulations:

"REVIEW BY THE COMMISSIONER. An agency's final decision issued pursuant to AS 44.62.632 may be reviewed by the commissioner for the issuing agency at the request of the applicant. The request must be filed with the commissioner within thirty (30) days of the applicant's receipt of the decision. The commissioner shall issue a decision within ten (10) days of the department's receipt of the request, unless the applicant has requested a hearing de novo, in which case such hearing shall be held within thirty (30) days of the department's receipt of the request, and the commissioner's decision shall be rendered within thirty (30) days of the conclusion of the hearing. Unless the agency decision is confirmed in its entirety, the commissioner shall issue a written decision setting forth his findings and conclusions in full.

REVIEW BY THE SUPERIOR COURT. (a) Judicial review by the Superior Court of a final decision issued by a state agency pursuant to AS 44.62.632 or 44.62.634 or of a decision of the commissioner issued pursuant to AS 44.62.635, may be had by filing a notice of appeal in the Superior Court in accordance with the applicable rules of appellate procedure. The right to appeal is not affected by the failure to seek reconsideration or further review pursuant to AS 44.62.635. The review shall be governed by the provisions of AS 44.62.560(b)-(e) and AS 44.62.570.

(b) On an appeal by the applicant to the Superior Court, the agency which issued the final decision has the burden of proving that the decision is in accordance with AS 44.62.632 and 44.62.634.

(c) An appeal taken under this section has preference on the calendar of civil actions before the court and shall be decided without unnecessary delay."

Additional Comments:

1. Comments of Other Agencies:

Comments of other agencies should be restricted to the manner in which the permitted activity may occur rather than whether the activity will be allowed to occur at all. Once the State issues an oil and gas lease, the lessee obtains the contractual right to conduct operations on the State's land. Recommendations by commenting agencies that certain activities should not be allowed, even though they are specifically authorized by the lease, are therefore inappropriate and should not be considered. The concerns of commenting agencies receive extensive analysis prior to the State's decision to lease. Once the State decides to schedule an oil and gas lease sale, commenting agencies should not be allowed to undermine this decision by recommending that the activity not be allowed.

2. State Agency Comments on Federal Permit Applications.

Proposed regulations do not constrain the degree to which a state agency may influence the approval of federal permit applications which are required to conduct the same or similar activities permitted by State agencies. State comments must be channeled through the same State agency who has the State permitting authority for the activity in question. There is no valid policy consideration

which would allow a State agency to permit a given activity and simultaneously allow another State agency to block that activity through the Federal permitting process. This is particularly true when the commenting agency was given a full opportunity to submit detailed comments and supporting rationale to the deciding State agency and then proceeds to require that conflicting conditions be imposed on the same activity through the federal permitting process. In order to avoid this problem, the regulations should assure that no department is able to block another departments decision via a "back-door" process.

3. Automatic Approval of Permit Applications.

Conspicuously absent from the proposed regulations is a provision regarding enforcement of the time limits established. In spite of statements by the Department of Law in the Executive Summary, many states, including California, have provided for automatic approval of some permit applications if no action is taken within the applicable time period. We strongly urge the Department of Law to include a section calling for automatic approval of permit applications in this circumstance. Unless permitting agencies face some penalties these regulations will provide little impetus for compliance.

**EXXON COMPANY, U.S.A.**

1800 AVENUE OF THE STARS • LOS ANGELES, CALIFORNIA 90067

LAW DEPARTMENT

February 25, 1981

Re: Uniform Procedures for  
Permits, Consistency  
Determinations and Appeals

Mr. Jonathan K. Tillinghast  
Special Assistant Attorney General  
Alaska Department of Law  
Pouch #  
Juneau, Alaska 99811

Dear Mr. Tillinghast:

We are pleased to have this opportunity to address some areas of concern which may not have been fully discussed in AOGA's comments on the captioned regulation proposals. We will limit these comments to those sections of the proposed regulations which affect coastal management consistency determinations.

First, we join many others in expressing our belief that the proposed regulations reflect Governor Hammond's stated desire to expedite and streamline this State's coastal management decision-making process as it pertains to consistency determinations. However, for some of the reasons expressed herein, these regulations offer the potential for abuses which may result in uncertainty, delays, and the possibility for challenge of consistency determinations once they are issued. Some of our more serious concerns are as follows:

- I. 22 AAC 10.020(a)(1): This section allows an extension of the deadline for making an agency decision if the commissioner of the agency certifies that the project for which the permit is sought involves substantial complex issues requiring additional time for review. This open-ended grant of discretion would allow all OCS applications to be deemed complex and the deadline for decision to be extended. We do not believe that such a possibility for delay was intended by the drafters of these regulations, nor is it supported by the intent of the Federal Coastal Zone Management Act of 1972 and its implementing regulations which encourage early issuance of consistency determinations [See, e.g., 15 CFR 930.63(a)].

- II. 22 AAC 10.030(c): This section provides that the deadline for making a final decision on a permit shall be tolled for a period equal to that time from an agency's date of request for additional information affecting the application until the date of full compliance with that request. 15 CFR 930.60 provides that only a state agency request for information specifically enumerated in 15 CFR 930.58 shall toll the applicable review period. The proposed 22 AAC 10.030 does not address this important distinction and opens up the possibility of further delay. At a minimum, the proposed section should be narrowly limited as to the type of additional information requests which will toll the time period for issuing a final permit decision in compliance with 15 CFR 930.60. Further, any tolling should occur only with respect to requests of information required to be supplied by 15 CFR 930.58.
- III. 22 AAC 10.040. This section provides that a corporate permit application must be signed by a duly authorized representative responsible for the overall management of the project or operation. This section is unnecessarily restrictive and should be amended to allow any duly authorized employee of the corporation to sign a corporate permit application. A duly-authorized representative will bind the corporation and thus serve the legitimate purpose of this regulation.
- IV. 22 AAC 10.070. This section authorizes a deciding officer to attach conditions to a permit where empowered by statute to do so. It should be clarified in this section that a deciding officer may not unilaterally attach conditions to a consistency determination. 15 CFR 930.63 & 930.64 allow a state agency either to concur or object to a consistency certification. 15 CFR 930.64 also provides a means by which the applicant may accept conditions in order to permit state agency concurrence with the consistency certification. At a minimum, Section 10.070 should be clarified to either provide that it does not apply to consistency determinations or to provide that any conditions must be agreed upon in accordance with 15 CFR 930.64. ....

- V. 22 AAC 10.080(c): This section treats an amendment to an existing permit as a separate Class I permit which is subject to public notice, comment and, possibly, a public hearing. We support AOGA's position that hearings on Class I permits should be held only if required by statute. Further, this section should be modified to recognize that changes to a permit which do not constitute a significant revision are not considered separate permits. This flexibility is essential to permittees whose activities undoubtedly require minor permit revisions over the life of a project.
- VI. 22 AAC 10.130: This section as it applies to 22 AAC 10.570(b), provides the means by which a local district may veto a project of overriding State or National interest. Again, we support AOGA's position on this section.
- VII. 22 AFC 10.130(d): This section gives an agency the discretion to consider comments not received within the applicable time periods. This section should be amended to provide that an agency shall not consider untimely comments. Such amendment would encourage timely comments and prevent further delays. This amendment would also assure that an applicant does not face imposition of additional conditions in a permit or denial of a permit based on comments to which the applicant has not had the opportunity to respond.
- VIII. 22 AAC 10.160: This section does not address the specific findings that are required to be made if a State agency objects to an applicant's consistency certification. (See 15 CFR 930.64) Further, the regulations implementing the federal Coastal Zone Management Act of 1972 allow a State agency to either concur with a consistency certification or object to such certification. The federal regulations do not permit a finding of consistency which is conditioned on the applicant's acceptance of unilateral conditions imposed by the State agency. Section 10.160 should be modified to reflect this intent.

IX. General Comments: To determine the procedures required of an applicant under these regulations requires extensive and confusing references to many different sections of the regulations. Once the applicant has completed this tedious task, the applicant is still unsure as to what procedures are required.

The Federal Coastal Zone Management Act of 1972 and its implementing regulations specifically provide that a State's Coastal Management Program must provide for adequate consideration and protection of the national interest. This protection is found through a balancing of the national interest with other factors. These proposed regulations do not include the national interest as one of the necessary elements which must be included in the balancing process.

Further, these regulations do not acknowledge that when an applicant submits an OCS exploration or development plan, all activities described in detail in those plans are subject to a single consistency determination. (See 15 CFR 930.80) Once a state agency issues a concurrence with an applicant's consistency certification for an OCS plan the individual permits required to effect such a plan are then not subject to further consistency review. These proposed regulations should expressly recognize this important distinction.

Again, we thank you for consideration of our comments.

Very truly yours,



Theresa R. Hebert  
Pouch 6601  
Anchorage, AK 99501  
907-263-3772

TRH/acm

February 9, 1981

Jonathan R. Tillinghast, Esq.  
Special Assistant Attorney General  
Alaska Department of Law  
Pouch K  
Juneau, AK 99811

Re: - Uniform Procedural Regulations

Dear Mr. Tillinghast:

The purpose of this letter is to comment, on behalf of Sohio Alaska Petroleum Company, on the above referenced regulations. Sohio is pleased that efforts toward regulatory reform are being made by the Hammond Administration. We believe this is one of the more substantial problems facing the oil and gas industry in Alaska, affecting both day to day operations and our long term planning processes.

We have set out at the beginning of this letter several general comments. Thereafter follow specific comments relating to specific sections.

A. GENERAL COMMENTS

1. Lack of lead agency concept. Sohio, as an operator of the Prudhoe Bay Field, and as a company conducting substantial exploration in the Arctic, obtains dozens of permits each year from the State of Alaska governing its operations. Primarily, these permits are received from DDEM, although other permits are obtained from other agencies of DNR. We must also obtain permits from the Army Corps of Engineers. We have had substantial problems in obtaining these permits in an orderly and predictable fashion. We believe that the main problem is that the State has no mechanism for determining once, and with finality, the policy or position of the State with respect to any single development. By making comments contrary to the terms of the State's permit issued by DNR on a project through DPDP to the Army Corps of Engineers, many times State agencies have been successful in either obtaining stipulations deviating from the terms of the DNR permits, or at least in substantially delaying the adjudication of the permit by the Corps of Engineers. We believe that the following section should be added to the

regulations to resolve this problem. It is, incidentally, carefully crafted to merge state and federal regulatory procedures in the most orderly fashion possible:

"ADD A NEW ARTICLE 6 AS FOLLOWS:

LEAD AGENCY PROVISIONS

22 AAC 10.600. ESTABLISHMENT OF A LEAD AGENCY. Lead agencies shall be established as follows:

- (a) Subject to the terms of these regulations, an agency:
  - (1) issuing a permit to conduct an activity; or
  - (2) directly conducting the activity itself;

shall be the lead agency on the matter, with sole authority to issue or withhold its permits and to determine questions of state policy arising out of such activities relating to the desirability of such an activity, to any condition or limitation sought to be imposed thereon, and/or the balancing of competing interests within the State.

Where two state agencies are issuing permits on such an activity, that agency primarily responsible for authorizing the overall activity shall be considered the lead agency for purposes of this section. For instance, if an agency is authorizing a primary activity, except for which authorization the activity would not take place, and another agency is authorizing a phase of such primary activity, then the lead agency is that which is authorizing the primary activity.

22 AAC 10.610. COMMENTS OF OTHER STATE AGENCIES.

- (a) All state agencies commenting upon an activity shall address their comments solely to the lead agency.
- (b) Comments and recommendations of resource agencies not received by the lead agency within 21 days of notice of the proposed action shall not be considered by the lead agency in taking its action.

22 AAC 10.620. STATE AGENCY COMMENTS AND RECOMMENDATIONS RESPECTING FEDERAL PERMITS.

- (a) Where a federal permit is also issued on an activity for which there has been established a lead agency for the State hereunder, the lead agency shall have sole authority to determine on behalf of the State its comments and

recommendations on the matter (including but not limited to its consistency with the ACMP, and stipulations and conditions recommended to be imposed thereon) and to communicate such policy on behalf of the state to the federal agency issuing such a permit.

(b) Where the application of these regulations and federal law will result in two state agencies commenting to a federal agency on a federal permit, the commenting agency which is not the lead agency shall make its comments in a narrow manner, consistent with the requirements of law, so as to give maximum effectuation to the purposes of this article. For instance, where the Department of Natural Resources is authorizing the development on state lands of a drillpad or island which is also subject to a U.S. Department of the Army, Corps of Engineers Section 404 Permit, and the activities to be conducted thereon do not involve discharges not otherwise regulated by state and/or federal law and regulation, DEC's Section 401 Water Quality Certification shall be limited in its scope, consistent with federal law, to the question of the effect of the construction and maintenance of the permitted work upon water quality, and questions of operations conducted thereon shall be reserved to DNR, the lead State agency on the matter.

RENUMBER ARTICLES 6, 7, 8, and 9 AS APPROPRIATE."

2. Resolution of "consistency finding" problems. The present problem of the State of Alaska relating to orderly consistency findings is that, pursuant to Administrative Order 54, DNR completes its own consistency review on matters involving DNR permits. However, confusion arises when the same project (for instance a drillpad) also requires a federal permit, for instance from the Corps of Engineers. The Corps of Engineers will not issue a permit without a consistency review being completed by the State. However, in spite of the DNR consistency review for purposes of the State permit on the same project, the federal consistency review is conducted by DPDP. This gives rise to confusion and disorder. The only possible result of this is delay and the imposition by agencies not primarily involved in the regulation of state activities of inconsistent permit stipulations. The regulations attempt to resolve the problem by allowing DPDP to complete all required DNR consistency findings under certain circumstances. This, in our view, only perpetuates the problems. We believe this problem can be rectified only by making clear that DNR, on behalf of the State of Alaska, conducts all consistency reviews on matters affecting DNR permits. This includes conducting a consistency review on state

February 9, 1981

permitted matters also permitted by the federal government for purposes of the federal permit, and on federal OCS matters not otherwise permitted by the State. We believe the following changes should be made:

22 AAC 10.510 should be changed to read as follows:

"22 AAC 10.510 CONCLUSIVE CONSISTENCY DETERMINATIONS ON [ACTIVITIES INVOLVING ENVIRONMENTAL IMPACT STATEMENTS AND] ACTIVITIES OCCURRING ON THE OCS. [When a direct federal activity or a federal permit or license necessitates preparation of an Environmental Impact Statement under 42 USC § 4332, the Office of the Governor, Division of Policy Development and Planning, will perform the consistency review for the activity, permit or license under 16 USC § 1456 (c).] The [Office of the Governor, Division of Policy Development and Planning] [division] will [also] conduct the [consistency] determination for activities [not otherwise covered by these regulations.] occurring on the Outer Continental Shelf adjacent to Alaska.] Subject to SECS. 500 and 580 of this chapter, no other consistency determination will be made for state or federal law purposes on the activity by a state agency.

22 AAC 10.520 shall be changed as follows:

22 AAC 10.520. CONCLUSIVE CONSISTENCY DETERMINATIONS INVOLVING DISPOSALS OF INTERESTS IN STATE LANDS AND PLANS OF OPERATIONS. [Except as provided in Section 510 of this chapter] (c) [C]onsistency determinations on disposals of an interest in state land [or on operations conducted on the Federal OCS] will be performed by the Department of Natural Resources... (the remainder of the section remains the same).

22 AAC 10.540 shall be changed as follows:

(a) (4) State plans [, programs] and studies developed by or affecting more than one state agency if no lead agency has been designated [hereunder or] by statute or executive action;

(a) (5) Federal activities for which there are no state permits or other approvals required [at the current level of detail]; and... (b) except as provided in SECS. 510-530 of this chapter, consistency determinations for other direct state and federal activities will be made by the [appropriate] [acting] state agency.

22 AAC 10.550 shall be changed as follows:

22 AAC 10.550. CONSISTENCY DETERMINATIONS ON OTHER ACTIVITIES. (a) For activities not covered by SECS. 510-540 of this chapter, consistency determinations will be made by state agencies in the course of otherwise required permit review, and [if there is no such otherwise required permit review,] by the division for the purposes of 15 CFR §930.

3. Local veto over state consistency determinations. The operation of Section 570(b) when viewed in the context of Section 130 and the definitional sections, relating to the terms "great weight" and "primary agency of expertise", give rise to a virtual veto power over the issuance of state permits held by local governments. While we have communicated separately on this matter, the problem is as follows: Under Section 570(b), for purposes of consistency determinations, Coastal Resource Districts (usually local government bodies) are considered to be "resource agencies". "Resource agencies", under Section 130, are to comment on state issued permits. Their comments are to be given "great weight" under Section 130. The term "great weight" is defined in the definitional section as "deference" unless the weight of the administrative record is against the opinion. The "great weight" that the local governmental body is given is, of course, limited to "primary area of agency expertise". However, with reference to Coastal Resource District which has drawn up Coastal Zone Management Plan under the State of Alaska statutes and regulations, the only conceivable area of "primary agency expertise" is in that plan. On this matter, the local government is to be given "deference". If, therefore, a local government feels that an activity to be conducted on state lands pursuant to state permits is inconsistent with the local plan, the views of that government will be given "deference" and the state thereby loses control of the management of state lands. We believe this problem can be rectified as follows:

"22 AAC 10.570 shall be changed as follows:

DELETE SUBSECTION (b).

22 AAC 10.920 shall be amended as follows:

22 AAC 10.920. DEFINITIONS. AS USED IN THIS CHAPTER:

(12) "Resource agency" includes the departments of Environmental Conservation, Natural Resources, and Fish and Game, and the Office of the Governor, Division of Policy Development and Planning. [For purposes of Section 570 of these regulations, the term also includes all state agency

members of the Coastal Policy Council.]"

4. Establishment of new and complex procedures. We do not believe that there has been demonstrated any need to deviate so substantially from the existing simple procedures relating to DNR permits. As you may know, the requirement of a state permit for the conduct of surface operations on state oil and gas leases, where there is involved state owned surface lands, is found completely, at the present time, on the early 1960's lease forms which provided that there would be placed "wildlife stipulations" on such activities as were appropriate. Other than that, there has never been in the past a regulatory mechanism set up to govern surface operations. Moreover, in view of the fact that this involves primarily a relationship between the lessor, the State of Alaska, on the one hand, and the lessee (Sohio or any other relevant company), on the other hand, and because a public interest review of the lease has been conducted prior to the sale pursuant to AS 38.05.035(a)(14), substantial public involvement has never been pursued in the past. Moreover, we are not familiar with any complaint from the general public that they have been excluded. The state has been careful, in the conduct of its informal procedures governing this conduct of surface operations, to protect the public interest by including the concerns of the relevant resource conservation agencies of the State of Alaska, and of local governments.

This, however, has changed under the new regulations. Substantial, new, and complex procedures are created by these regulations. Complicated public notice provisions are created. Public hearing rights are created, where previously there were none. As well, complex and lengthy appellate procedure mechanisms are created as well. None of this has existed in the past. To impose upon us, at this point, with the intent of "reforming" the regulatory mechanism, such new and complex procedures seems incongruous at best. We believe that the entire matter of public notice, public participation and hearing, and public appeal rights should be made applicable to any particular permit program at the express option of the relevant resource agency, and only to the degree necessary to achieve the purposes of that agency as are appropriate under the circumstances. We believe that this should be done with an eye to maximizing final decision making at the outset by these departments (by making most decisions be made by the commissioners so that little if any opportunity for administrative exhaustion remains) in order to simplify the bureaucratic morass which can be created by the existence of many administrative appeals.

5. Complexity of administration and susceptibility to challenge by lawsuit. Apart from the matters discussed above, the new regulations create other procedures which will be difficult to

administer and which invite litigation. For instances: (a) the interagency review section, 22 AAC 10.130, and the relevant definitions, found at 22 AAC 10.920(4), (7) and (9) are unduly complicated. We understand that these regulations were created under a requirement of consensus among the various agencies on the matter. However, we believe that what has been created here will serve as an albatross around the neck of orderly administration by the State of Alaska because the complicated structure of the new interagency relationships established in these sections is a new and very obvious target for litigation. The question of what part of any decision involves balancing, what part of a decision is to be based upon the opinions of agencies which are accorded "great weight", and when is a commissioner's balancing decisions made contrary to the recommendations of a "resource agency", whose decisions are accorded "great weight", improper and/or arbitrary and capricious, are matters only capable of resolution in Court. This section will likely give rise to the same sort of endless, dilatory procedural litigation as that created by NEPA. We believe that this section as drafted is unreasonable in its effect and should be amended to read in its entirety as follows:

"An agency issuing a permit is the lead agency on that permit and may, in its discretion, consider the recommendations on the matter of other agencies, giving due weight to their opinions based on their relevant expertise."

The proposed amendment has much the same effect as the present Section 130 and the relevant definitions, but does not create a broad spectrum of complex interrelationships and carefully defined terms. It rather relies upon the general concept of agency discretion, the limits of which and the definition of which are already understood by the judiciary.

Another example of the unnecessary complexity and susceptibility to litigation created in the regulations is 22 AAC 10.160. This section requires there to be three different sorts of findings appended to every permit issued by any of the four agencies subject to the regulations. Subsection 1 requires findings on the activities compliance with the agencies applicable standards; subsection 2 requires findings supporting the decisions; subsection 3 requires a reply to any resource agency recommendation under Section 130 and to any "significant and material recommendation" made at a public hearing. There are three affects of this section. First, it is highly repetitive. All three subsections can easily be addressed in one statement respecting findings. Second, it is not necessary in all cases. The State issues hundreds of permits each year, and only a few require findings. Third, the effect of subsection (3) is to

invite litigation. "Any" resource agency recommendation or "any significant and material" recommendation of a member of the general public made at a hearing must be replied to; if there is the slightest omission (even in the mind of some potential and unreasonable litigant litigation will result and the decision is in doubt. In order to avoid this, we believe that the entire subsection should be deleted and Section 160 should be rewritten as follows:

"22 AAC 10.160 AGENCY DECISION. The agency decision will meet the requirements of Section 60 of this chapter and will contain, in the discretion of the deciding officer, findings which support his decision. These findings may include a statement of the basis for the acceptance or rejection of any recommendation or comment received by the deciding agency on the matter."

Again, this section, as we propose to rewrite it, relies upon well understood notions of discretion.

B. SPECIFIC COMMENTS.

1. Article I--General provisions. This article relates generally to establishing the parameters of the chapter.

(a) Section .020. We believe the concept of "extraordinary circumstances" should be introduced before any deadline for the issuance of permits can be extended. Otherwise, the opportunity for manipulation of the process (even, under subsection (3), with the apparent consent of the applicant) is obvious.

(b) Section .030. If the notion is to be introduced into these regulations that time limitations do not begin to run until a "completed permit application" is received, and the deciding officer is vested with the discretion to find that otherwise regular permit applications do not contain sufficient information to allow him to make a decision, then very clear parameters of what is required must be established in the relevant agency regulations to avoid abuse or misunderstanding under this section.

(c) Section .040. This section establishes in subsection 1 as follows:

"... all permit applications must be signed ... in the case of corporations, by a duly authorized representative responsible for the overall management of the project or operation...."

This is an unduly restrictive requirement. Traditionally, Sohlo's applications for permits from the State have been signed

by our local land manager. There has never been a problem with this in the past, and we see no reason to deviate from this practice now. Obtaining the signature of a person "responsible for the overall management of the project or operation" can, given the spectrum of activities administered by Sohio, cause significant problems, particularly with reference to major projects and operations. The "overall manager" should be able to delegate his authority.

(d) Section .050 and .060. Our comments on this section, relating to public hearings, and appeals, as they relate to DNR permits has been made above in (A) (4).

(e) Section .085. This section provides for the creation of a memoranda of understanding with federal agencies, which can, by their terms, modify the time limits established by the article. We strongly believe that a memorandum of understanding should be drafted consistent with the time limits of this article, and that all existing memoranda of understanding should be revised to reflect the time provisions of article 1. While, of course, the State cannot control the timing of federal agencies, the State should provide in its regulations that it will complete all activities required under such memoranda of understanding within the time limitations imposed under this article.

2. Article 5. Consistency determinations. Comments on Article 5 have been made above in Section (A) (2) of these comments. However, a matter not addressed there is the application of Section 10.580, which provides that an activity which requires, for instance, a DNR permit and also a federal permit, and the federal permit is applied for before the state permit, that DPDP will do the consistency certification. We believe this is entirely inappropriate. If the matter is clearly one regulated by DNR, then DNR should do the consistency determination for purposes of the federal application, whether a DNR permit has been timely applied for or not. It is clear that a DNR consistency certification will be completed for purposes of the state permit in any case, and therefore this suggested change avoids duplication.
3. Article 6 and Article 8. Appeals provisions. As stated above, in Section (A) (4) of these comments, we believe these provisions are inappropriate for application by all agencies, in all instances, and should be deleted or made optional.
4. Article 9. Definitional section. Parts of the definitions have been discussed above, in Section (A) (2), (3), and (5) of these comments. However, apparently appended to this article 9 on page 14, are found two other provisions. These purport to amend sections of regulations not otherwise the subject of these

Jonathan K. Tillinghast  
Page 10  
February 9, 1981

uniform procedural regulations. One is objectionable. It is an amendment to 6 AAC 80.900(20), the Coastal Policy Council adopted definition of the term "feasible and prudent". This attempt to change this term is totally inappropriate, because it does not relate in the least to uniform procedural regulations.

Moreover, this change, each time it has been attempted made before the Coastal Policy Council, has generated substantial controversy. The present definition of "feasible and prudent" has been revised carefully to embrace and balance the concerns of the Coastal Policy Council (which is made up of both state agencies and local governments), and of the general public, which includes the oil industry and environmental groups. Changing the definition of the term "feasible and prudent" in the manner attempted here would substantially deviate from the definition of that term adopted by the Coastal Policy Council, which appropriately includes the concept of economic practicability as well as the feasibility of alternative sites. The Friends of Overton Park v. Volpe definition of "feasible and prudent" found in the proposed amendment was adopted with an eye to government programs, carried out and paid for by government agencies, and to whom profit and loss is not important. Thus, the absence of a cost factor involved in the definition of the term is appropriate. However, because the Coastal Policy Council definition, in quite a different situation, involves government regulation of private enterprise (and even homeowners), the introduction of the notion of financial practicability is of the utmost importance. For all these reasons, we believe that this change should be deleted from the regulations. Failure to do so will result in the involvement of these regulations in substantial controversy well beyond their stated purpose, which could jeopardize the Uniform Procedural Regulations.

We thank you in advance for your consideration of these comments. If I can be of further assistance, please do not hesitate to call or write. Kindest personal regards.

Sincerely,

James D. Linxwiler

· COMMENTS OF TEXACO INC.  
ON  
PROPOSED REGULATIONS  
OF THE  
DEPARTMENTS OF NATURAL RESOURCES,  
ENVIRONMENTAL CONSERVATION  
FISH AND GAME, AND THE OFFICE OF THE  
GOVERNOR, DIVISION OF POLICY  
DEVELOPMENT AND PLANNING

MY NAME IS ETHEL H. NELSON AND MY POSITION IS ADVANCED EXPLORATION  
LAND REPRESENTATIVE FOR TEXACO INC. WE APPRECIATE THE OPPORTUNITY TO  
APPEAR AT THIS HEARING AND EXPRESS OUR VIEWS CONCERNING THE PROPOSED  
UNIFORM PROCEDURES FOR PERMITS, CONSISTENCY DETERMINATIONS AND APPEALS.  
WE COMMEND THE DEPRATMENTS FOR THEIR EFFORTS TO STREAMLINE THE APPROVAL  
OF VARIOUS STATE PERMITS AS WELL AS THE COASTAL MANAGEMENT DECISION-  
MAKING PROCESS. WE CAN APPRECIATE THE LONG HOURS SPENT BY THE STAFFS  
OF THESE DEPARTMENTS AND THE DEPARTMENT OF LAW OVER THE PAST YEAR AND  
A HALF OR SO.

WE WOULD LIKE TO PREFACE OUR REMARKS T NIGHT WITH THE STATEMENT THAT  
MOST OF OUR CONCERNS WITH THE REGULATIONS ARE THAT PROCEDURES FOR THE  
PROCESSING OF PERMITS ARE BEING APPLIED TO PLANS OF OPERATIONS INVOLVING  
OIL, GAS, COAL AND OFFSHORE MINING ACTIVITIES. THESE ACTIVITIES ARE  
APPROVED PURSUANT TO LEASES AND PERMITS ALREADY ISSUED BY THE STATE, AND  
ARE SUBJECT TO THE INTERAGENCY REVIEW PROCESS SET UP BY MOU'S BETWEEN THE  
DECIDING AGENCY AND THE COMMENTING AGENCIES. WE STRONGLY OBJECT TO THE  
INCLUSION OF PLANS OF OPERATIONS IN PROCEDURES THAT MAY BE APPROPRIATE  
(WITH MODIFICATIONS) FOR ISSUING PERMITS BUT WHICH ARE NOT APPROPRIATE  
FOR APPROVAL OF PLANS OF OPERATIONS. WE BELIEVE THAT THESE TYPES OF  
ACTIVITIES SHOULD BE EXCLUDED FROM THESE REGULATIONS AND CONTINUE TO BE  
ADMINISTERED UNDER EXISTING MOU'S AND PROCEDURES OR UNDER SEPARATE

REGULATIONS WRITTEN TO IMPLEMENT THE EXISTING PROCEDURES. WITH THIS IN MIND, I WILL READ OUR GENERAL COMMENTS REGARDING THE PROPOSED REGULATION.

ON DECEMBER 5, 1980, GOVERNOR HAMMOND HELD A PRESS CONFERENCE IN WHICH HE STATED THAT HIS ADMINISTRATION WAS WORKING ON UNIFORM PROCEDURES FOR PERMITS WHICH WOULD ESTABLISH THE SHORTEST FEASIBLE DEADLINE FOR THE ISSUANCE OF STATE PERMITS FOR NATURAL RESOURCE DEVELOPMENT; ESTABLISH UNIFORM PERMIT PROCEDURES; DEFINE THE RIGHTS OF THE APPLICANT AND OTHER PERSONS IN THE PERMITTING PROCESS; AND STREAMLINE THE STATE'S COASTAL MANAGEMENT DECISION-MAKING PROCESS.

THESE GOALS WERE STATED AGAIN IN THE EXECUTIVE SUMMARY WHICH ACCOMPANIED THE FINAL DRAFT OF THE UNIFORM PROCEDURAL REGULATIONS WHICH ARE THE SUBJECT OF THIS HEARING TONIGHT.

WHILE THE PROPOSED REGULATIONS ACCOMPLISH A GREAT DEAL IN SOME AREAS, UNFORTUNATELY THEY DO NOT TOTALLY ACCOMPLISH THE GOVERNOR'S STATED GOALS.

IN AN ATTEMPT TO SIMPLIFY THE CURRENT PERMITTING PROCESS, THE STATE HAS PROPOSED VOLUMINOUS REGULATIONS WHICH WILL, IF ADOPTED, CREATE COMPLICATED NEW REQUIREMENTS THAT DO NOT PRESENTLY EXIST, SUCH AS PUBLIC NOTICE, HEARINGS AND ADMINISTRATIVE APPEAL PROCEDURES FOR APPROVAL OF PLANS OF OPERATIONS.

IN SECTION 22 AAC 10.020, FOR EXAMPLE, A DEADLINE FOR APPROVAL IS SET AT 30 AND 65 DAYS RESPECTIVELY FOR CLASS I AND CLASS II PERMITS, WHICH SOUNDS ENCOURAGING UNTIL YOU READ ON. THE SAME SECTION, (1) THROUGH (4), LISTS THE MANY ARBITRARY WAYS IN WHICH THESE DEADLINES CAN BE EXTENDED WITHOUT PLACING A TIME LIMIT ON THE EXTENSIONS.

22 AAC 10.40 SPECIFIES THAT A PARTICULAR CORPORATION EMPLOYEE MUST SIGN THE PERMIT APPLICATION FOR A CORPORATION, BUT ALLOWS FOR ANY EMPLOYEE OF OTHER APPLICANTS TO SIGN, INCLUDING GOVERNMENT AGENCIES. "ANY DULY

AUTHORIZED EMPLOYEE" SHOULD BE ALLOWED TO SIGN FOR CORPORATIONS ALSO.

SECTION 22 AAC 10.50 ESTABLISHES THE NEW TIME-CONSUMING PROCEDURE FOR ORAL PUBLIC HEARINGS ON, AMONG OTHER THINGS, PLANS OF OPERATIONS FOR OIL AND GAS LEASES THAT HAVE ALREADY BEEN SUBJECT TO EXTENSIVE NOTICE AND REVIEW (INCLUDING PUBLIC HEARINGS) AT THE TIME OF THE LEASE SALE.

SECTION 22 AAC 10.130 INDICATES THAT A "COMMENTING AGENCY" COULD RECOMMEND DENIAL OF APPROVAL OF A PLAN OF OPERATIONS, FOR EXAMPLE, TO BE CONDUCTED ON AN OIL AND GAS LEASE, A COAL LEASE OR A MINING LEASE. IN THESE INSTANCES THE STATE HAS ALREADY ENTERED INTO A CONTRACT WITH THE APPLICANT IN THE FORM OF A LEASE, IN WHICH THEY WERE GRANTED THE RIGHT TO EXPLORE FOR AND EXTRACT THE OIL, GAS AND COAL FROM THE LANDS COVERED THEREBY. THIS WOULD CLEARLY BE A BREACH OF CONTRACT ON THE PART OF THE STATE. REVIEW AGENCIES SHOULD BE INSTRUCTED BY THE DECIDING AGENCY TO REVIEW THE PLAN OF OPERATIONS FOR CONSTRUCTIVE RECOMMENDATIONS WHICH WILL ACCOMMODATE PROBLEMS OR POTENTIAL PROBLEMS RELATIVE TO THAT AGENCIES' RESPONSIBILITIES. IT SHOULD BE MADE CLEAR THAT DENIAL IS NOT AN OPTION.

22 AAC 10.500 CONTAINS SEVERAL DISTURBING FEATURES. SECTION 500 (a) TELLS US THAT ONE CONSISTENCY DETERMINATION WILL BE MADE FOR ANY COASTAL ACTIVITY REQUIRED TO BE CONSISTENT WITH COASTAL MANAGEMENT GUIDELINES, AND WE AGREE THAT THIS IS A COMMENDABLE IDEA. HOWEVER, SECTION 500 (b), DESPITE BEING UNINTELLIGIBLE, SEEMS TO QUALIFY THE IDEA EXPRESSED IN 500 (a), WHILE 500 (c) RATHER CLEARLY TELLS US THAT ANY SUCH COASTAL ACTIVITY MAY BE SPLIT INTO ADDITIONAL CONSEQUENTIAL ACTIVITIES WHICH MAY OR MAY NOT BE COVERED BY THE INITIAL CONSISTENCY DETERMINATION. IN OTHER WORDS, THE DECIDING AGENCY APPARENTLY HAS THE OPTION TO HALT CONSEQUENT ACTIVITIES THROUGH REAPPRAISAL OF IT'S PRIOR DETERMINATION ON THE BASIS OF NEW INFORMATION WHICH WAS NOT AVAILABLE AT THE PRIOR STAGE.

SECTION 570 (b) RAISES A SERIOUS QUESTION REGARDING THE AUTHORITY OF THE DECIDING AGENCY TO GRANT A CONSISTENCY DETERMINATION. THIS SECTION STATES THAT A COMMENTING "RESOURCE AGENCY" INCLUDES "ANY COASTAL RESOURCE DISTRICT WITH AN APPLICABLE AND APPROVED COASTAL MANAGEMENT PLAN UNDER AS 46.40." SECTION 130 (c) STATES THAT "GREAT WEIGHT" WILL BE ACCORDED TO COMMENTS OF THE OTHER RESOURCE AGENCIES SOLICITED BY THE DECIDING AGENCY IF THE MATTER IS IN THEIR PRIMARY AREA OF EXPERTISE. SECTION 920 (7) DEFINES "GREAT WEIGHT" AS DEFERENCE, UNLESS THE ASSERTION IS CONTRARY TO THE WEIGHT OF FACT OR OPINION IN THE ADMINISTRATIVE RECORD. WE EXPECT THAT THE LOCAL GOVERNMENT OF A COASTAL RESOURCE DISTRICT WILL CLAIM TO HAVE PRIMARY EXPERTISE IN ANY ACTIVITY AFFECTING THEIR LANDS, AND WE BELIEVE THAT THIS SECTION CAN BE USED TO VETO PROJECTS OF STATE CONCERN WHICH ARE OPPOSED BY THE COASTAL DISTRICTS.

IN SUMMARY, WE WOULD LIKE TO REITERATE OUR FEELING THAT SEVERAL EXISTING PROBLEMS, ESPECIALLY IN THE AREA OF CONSISTENCY DETERMINATIONS, CAN BE RESOLVED BY THESE PROPOSED REGULATIONS AND WE SINCERELY APPRECIATE THE EFFORTS OF ALL WHO HAD A PART IN WRITING THEM.

THERE ARE OTHER SECTIONS OF THE PROPOSED REGULATIONS WITH WHICH WE HAVE SOME CONCERNS. A DETAILED WRITTEN ANALYSIS OF THE FOREGOING GENERAL COMMENTS AS WELL AS OTHER AREAS OF CONCERN WILL BE SUBMITTED FOR YOUR CONSIDERATION BY FEBRUARY 27, 1981.

AGAIN, WE APPRECIATE THE OPPORTUNITY TO EXPRESS OUR VIEWS AND HOPE THAT OUR COMMENTS ARE HELPFUL.

TEXACO



PETROLEUM PRODUCTS

February 24, 1981

TEXACO INC.  
P. O. BOX 4-1670  
ANCHORAGE, ALASKA 99509

UNIFORM PROCEDURAL REGULATIONS

Department of Law  
Pouch K, State Capitol  
Juneau, AK 99811

Attention: Mr. Jon K. Tillinghast  
Special Assistant Attorney General

Gentlemen:

Texaco Inc. appreciates the opportunity to comment on the referenced permit regulations of the Departments of Natural Resources, Environmental Conservation and Fish and Game; the Boards Fisheries and Game and the Alaska Coastal Policy Council.

As we stated at the hearing on February 6, 1981, we are opposed to the inclusion of plans of operations in these proposed permit regulations in their present form, primarily because they do not fit well. We would like to reiterate our feeling that plans of operations involving oil, gas, coal and offshore mining activities as well as hardrock mining should be excluded from these proposed regulations and continued to be administered under existing MOU's and procedures or under separate regulations written to implement the existing procedures. We note that hardrock mining operations have not been considered in the proposed regulations and suggest that plans for those activities be covered by the same procedural regulations.

In view of discussion at the February 6 hearing regarding our opposition to the inclusion of plans of operations in these regulations, our comments are a constructive attempt to reword some of the sections to more logically include operations in these regulations.

We also believe that the adoption of the proposed regulations is premature, as the Legislature is considering at least one permitting bill which may require amendment to these regulations. We suggest that work be continued on the regulations in an effort to iron out any problems and to prepare them for adoption, but wait until the Legislature acts on a permitting bill before actual adoption.

We continue to support the department's efforts to establish uniform permit procedures including the streamlining of the coastal zone consistency determination process, and feel that a great deal can be accomplished under these proposed regulations. However, we have concerns regarding some of the proposed sections and offer the following analysis for your consideration:

22 AAC 10.010. This section says that the agency's regulations will identify permits as Class I or Class II. The Notice of Proposed Changes in the Regulations which accompanied the proposed regulations and the Executive Summary stated that the adoption of this section would designate the permits as either Class I or Class II. We are concerned that neither these regulations nor the agency's regulations designate permit classes. We feel that class designations should be made by amendments to the agency's regulations adopted simultaneously with these regulations or by the adoption of these regulations.

22 AAC 10.020. A maximum time limit for extensions should be stated for (1) through (4) of this section. We suggest that 10 days may be a logical amount of time for both Class I and Class II permits.

22 AAC 10.030. Fifteen (15) days should be sufficient time to notify the applicant of an incomplete application for both classes of permits.

22 AAC 10.040(1). This section should provide for the signature of "any duly authorized employee" of a corporation as in (4).

22 AAC 10.050(a)(1). Hearings should be held only if the statutes require it, or federal law requires it to accomplish a binding consistency determination.

22 AAC 10.050(b)(1). Delete "or, for Class I permits, likely." Hearings should be held on Class I permits only if required by statute. "Likely concern" is not good enough cause for holding a public hearing.

22 AAC 10.060(a)(2). A statement that a person aggrieved by the officer's decision may apply for reconsideration under the provisions of 22 AAC 10.620 through 22 AAC 10.670 of this chapter.

This change is necessary because of recommended changes in the appeal sections of the proposed regulations.

22 AAC 10.060(a). Add a new subsection (3) which would read "(3) If, at the end of the applicable time period the deciding officer has taken no action and the applicant has a proper bond on file, if required, the application is deemed approved and the permit granted pursuant to this chapter.

22 AAC 10.085. In the second sentence, delete the words "which would" and replace them with the words "shall not," end the sentence after the word "chapter" and delete the remainder of the section.

All existing MOU's should be amended to comply with these regulations and any new ones should be written to comply with them.

22 AAC 10.100(d). Replace the words "class A or Class B appeal of the agency's decision is taken," in the first sentence with "application for reconsideration is made."

This change is necessary because of recommended changes in the appeal sections of the proposed regulations.

22 AAC 10.120(c). This section should provide for a copy of the notice to be sent to appropriate local governments. We could never be sure that we know all the units of local governments claiming jurisdiction.

22 AAC 10.130(b). Add "except in the case of plans of operations" between "permit" and "or" in the middle of the second sentence.

The commenting agencies should be instructed by the deciding agency to review the plan of operations and make constructive recommendations which will accommodate problems or potential problems in their respective areas of responsibility. It should be made clear that denial is not an option where plans of operations are concerned. The right to explore for and to develop discoveries has already been granted by the state.

22 AAC 10.130(c). Delete the words "accord great weight to" in the first sentence and replace them with "consider the."

22 AAC 10.160(3). The issuing decision is not the place for explaining why resource agency recommendations were rejected. A separate document between the deciding agency and the commenting agencies could accomplish this without cluttering up the decision.

22 AAC 10.500(c). Delete this subsection. Section 500(a) provides that one consistency determination for each activity will be made; (b) explains that subsequent activities still need a consistency determination, even where a prior related activity had been given a determination, which is okay. However, (c) allows the deciding agency to go back and reappraise a prior determination based on new information which was not available at the prior stage. This could be dangerous. We are concerned that an activity that has been granted consistency with the ACMP may be cancelled through a non-consistent determination made for a necessary consequent activity. This could stop a project already well along toward completion by a retroactive non-consistency determination. A project should be found either consistent or non-consistent with ACMP at the outset.

22 AAC 10.510. Add the words "except pertaining to state oil and gas leases" between "42 U.S.C. § 4332" and "the office of the . . . ."

This change is to clarify that the Department of Natural Resources is responsible for consistency determinations on disposals of interest in state lands, including environmental impact statements or federal permits requiring an environmental impact statement.

22 AAC 10.520. Add the words "including a joint state/federal oil and gas lease sale where an environmental impact statement is required" at the end of the first sentence. Add the words "including associated federal permits requiring an environmental impact statement" at the end of the second sentence.

This change is for the same reason as 510.

22 AAC 10.550. Delete (a) and (b).

These subsections provide for two consistency determinations on "other activities" which is not in keeping with the stated intent of these regulations.

22 AAC 10.550(c). We suggest that the term "de minimus" be replaced by the word "minor," "minimum," "trifling" or some other easily understood term. Not everyone reading these regulations are attorneys nor do they all have access to Black's Law Dictionary.

22 AAC 10.570(b). Delete this subsection and add "all state agency members of the Coastal Policy Council" to the definition of "resource agency" in .920(12).

22 AAC 10.580. Change this section to read: "When an activity requires more than one permit, the applicant, in order to obtain a conclusive determination under Secs. 510-540 of this chapter, should apply for the appropriate permit under those sections prior to or at the time of application for any other necessary federal permit or license. If an applicant applies for a federal license or permit prior to applying for a state permit which would provide the proper forum for a conclusive consistency determination under Secs. 510-540 of this chapter, the designated lead agency may render a consistency determination which is limited to the scope of the activity contemplated by the federal license or permit and contingent upon the issuance of an ultimate conclusive consistency determination. Thereafter, an applicant may either submit application for additional federal licenses or permits and obtain further non-conclusive consistency determinations, or may apply for the appropriate state permit under Secs. 510-540 and obtain a conclusive consistency determination."

As proposed, this section could require an applicant to submit all applications simultaneously, which would be cumbersome, if not impossible in some cases.

22 AAC 10.600 through 22 AAC 10.860. In general, the appeal procedures are too complicated and time consuming. We suggest that Sections 22 AAC 10.600 through 22 AAC 10.860 be deleted and replaced by the procedures set out in Chapter 83 of the Oil and Gas Leasing Regulations be used with some modifications, as follows:

22 AAC 10.620. Reconsideration. (a) Within fifteen (15) days after the receipt of the agency decision, the applicant may file a request for reconsideration to the director if the action was taken without the advance approval, consent or concurrence of the commissioner, or to the commissioner, if he had approved, consented to or concurred with the decision in advance of its issuance.

22 AAC 10.630. Judicial Appeals. A decision or other action of the division, the director or the commissioner becomes final for purposes of an appeal to the superior court 30 days after delivery in person or by certified mail or registered mail, or as provided by applicable provisions of the Administrative Procedures Act.

22 AAC 10.540. Applications for Reconsideration. An application for reconsideration or an appeal must be filed with the deciding agency and must contain the following information:

- (1) A clear and concise statement of the material factual issues proposed for reconsideration;
- (2) A statement on how the decision will injure the applicant; and
- (3) A statement of intent to file a brief, if applicable.

22 AAC 10.650. Briefs. Written briefs in support of an application for reconsideration or appeal may be filed with the division within 20 days after the filing of the application. The intention to file a brief must be specified in the application for reconsideration or appeal.

22 AAC 10.660. Oral Argument. Oral argument may be allowed at the discretion of the officer who is to reconsider the action if written request for it is filed with the division within the time allowed for filing written briefs.

22 AAC 10.570. Notice of Decision. Following reconsideration of any action or final decision on appeal, the applicant will be given notice of the decision reached, specifying whether the action is affirmed, reversed, or modified, and if the last, the details of the action as modified.

22 AAC 10.820(a). In the event that section 22 AAC 10.820(a) is not deleted, we are concerned that it says that the appellate officer will be designated by the regulations of the agency hearing the appeal. We are not aware of proposed amendments to the agency's regulations to accomplish this. We feel that designations of appellate officers should be made by amendments to the agency's regulations adopted simultaneous with these regulations or by the adoption of these regulations.

22 AAC 10.900(a). Delete the reference to "sec. 620" and replace it with "sections .620 through .670."

This is to accommodate the recommended changes in the appeal sections of the proposed regulations.

22 AAC 10.900(b). Delete the first part of the first sentence to the first comma. Start a new sentence beginning with "A copy of all matters and proof of service . . . ."

22 AAC 10.920(3). Add "except where otherwise required by the agency's regulations," between the words "means" and "an" in the first sentence.

This suggestion is made to accommodate the fact that applications for approval of plans of operations are not made on a form, but are prepared in accordance with the requirements of the proposed leasing and unitization regulations currently being considered for adoption.

22 AAC 10.920(7). Change "deference" to "serious consideration." Yielding to the opinion of other resource agencies would in effect make them the "deciding agency" rather than the agency responsible for the issuance of the permit.

22 AAC 10.920(12). Add a sentence at the end of this section to read "For the purposes of .570 of these regulations, the term also includes all state agency members of the Alaska Coastal Policy Council." This sentence is lifted from .570(b).

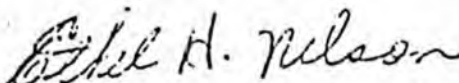
6 AAC 80.900(20). We recommend deletion of this section as well as section 6 AAC 80.010(b) because they are not subject to these uniform procedural regulations. Further, the attempt to amend .900(20), in the past has created considerable controversy, and most likely will again, with the possibility of jeopardizing the uniform procedural regulations. As proposed, the definition would not give consideration to economics which is important in determining if an issue is "feasible and prudent."

Finally, we would like to express our concern regarding the proposed Land Use Regulations, Chapter 65 and the proposed Miscellaneous Land Use Regulations, Chapter 96; how they relate to each other and to these uniform permit regulations. We would appreciate any information available as to the status of these chapters.

Again, we appreciate the opportunity to comment on these proposed regulations and hope that our comments will be helpful. If you have any questions, please do not hesitate to call or write.

Very truly yours,

TEXACO inc.



Ethel H. Nelson  
Advanced Exploration Land Representative

EHN:bjs

cc: Mr. Glenn Harrison, Director, DHEM

TO: The Honorable Jay S. Hammond  
Governor  
State of Alaska

DATE: April 22, 1921

FILE NO:

TELEPHONE NO:

FROM: Robert E. LaRasche  
Commissioner  
Department of Natural Resources

SUBJECT: Uniform Procedures for  
Permits, Consistency  
Determinations, and Appeals

For purposes of the meeting scheduled Friday, April 24, to finalize regulations on uniform procedures, I am setting out my comments on the draft distributed March 26 together with the memorandum by Jon Tillinghast dated April 13. This program has generated much interest among the legislature, industry, and public interest groups. As has been true throughout, my comments are for the purpose of assisting you in obtaining a permit reform program which (1) achieves genuine deregulation, (2) maximizes certainty as to the respective authorities of state agencies, and (3) provides a practical and workable product to increase efficiency in State government.

I continue to have objection to four provisions of the draft regulations, which are as follows:

1. Proposed Sec. 22 AAC 10.550(b) lists the factors to be considered in determining whether to hold a hearing on a permit application. With respect to paragraph (5), earlier drafts spoke only to the possible delay in the starting date of a project. The most recent draft places the delay factor in the context of "the likely impacts of the project". Since any major project will undoubtedly have significant impacts, the addition of this phrase effectively eliminates delay as a consideration in deciding not to hold a public hearing on major projects.

2. Proposed Sec. 22 AAC 10.570(g) provides for monitoring of consistency determinations by DPOF. I have no objection to the concept of monitoring, nor to formal amendment of the regulation setting forth the coastal management standards if it is the opinion of the cabinet that the standards are not accomplishing desired results. However, formal recommendations for, and the issuance of, "interpretations" of coastal management standards by one agency based on the case history of consistency determinations made by another agency troubles me greatly. Regardless of the provision in paragraph (g) that such binding interpretations are prospective only, the analysis leading to said recommendations and interpretations will amount to a formal post mortem of decisions already made by State government. While paragraph (g) states that such interpretations may not serve as the basis for an appeal of a consistency determination, consideration of facts affecting the coastal zone is inherently part of the "best interest" decision DNR makes prior to the disposition of any interest in land (which is not protected from appeals by these regulations).

As a result, I expect that recommendations and interpretations generated under this paragraph will, as admissions against interest by State government, serve as the basis for litigation challenging oil and gas lease sales, timber sales, land disposal and other dispositions by this Department.

It seems to me that the alleged need for paragraph (g) carries with it the implication that administrative orders on major project review and oil and gas leasing, the state clearinghouse procedure, and the interagency review provisions of these regulations are inadequate. Moreover, I see no reason why DPEP cannot perform an informal monitoring function without memorializing it in a regulation.

3. Proposed Sec. 22 AAC 10.570(h) speaks to the preceden value of consistency determinations made by DPEP prior to the effective date of these regulations. It goes without saying that the State should not change its interpretation of any laws or regulations without good reasons. Why, however, is it necessary to state this objective in regulatory form only for the Coastal Management program? Moreover, I can virtually guarantee that private organizations of any philosophy may use this provision to challenge any consistency determination on the grounds that it is not consistent with a consistency determination made on a similar subject previously.

4. The memorandum of April 13 authored by Jon Tillinghas suggests changing the language regarding rebutting of comments submitted by other agencies from "burden of moving forward" to "burden of proof". In order to protect the legality of an oil and gas lease sale, land disposal, or other disposition of land interests, this change will require DNR to (1) assume in nearly all cases that an agency comment is within their primary area of expertise, and (2) disprove every comment submitted which we do not agree with individually and with a preponderance of the evidence. Moreover, every attempt by DNR to do this will be subject to judicial examination in the context of any litigation filed, and I expect this will become a common occurrence. I would strongly urge that the phrase "burden of moving forward" be used, which requires us to respond to comments but does not establish formal standards of proof.

Overall, I continue to have reservations about the overall complexity of these regulations, considering that they must be followed to the letter by literally hundreds of state employees in order to avoid committing a procedural error rendering a project legally vulnerable. As you know, a number of groups have made a profession out of instituting litigation against a project on procedural grounds when their real objection is to the project itself; such litigation may delay or cancel a project without the advisability of the project ever being actually considered.

by the judge. Since the complexity of these regulations is largely attributable to the provisions implementing the Coastal Management Act, I continue to have doubts about the desirability of this legislation as I expressed in an earlier memorandum.

Nevertheless, there are many laudable portions of these regulations which will have a beneficial effect on the efficiency of State government. Moreover, this is the first permit reform project which has reached the point of having a conclusion. I ask that the serious deficiencies in the draft regulations outlined above be reviewed, but I will abide by the consensus of the cabinet on the final result.

# MEMORANDUM

# State of Alaska

DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF MINERALS & ENERGY MANAGEMENT

TO: Robert E. LeResche,  
Commissioner

DATE: January 2, 1981

Geoffrey Haynes  
Deputy Commissioner

FILE NO:

276-5113

TELEPHONE NO:

FROM: Glenn Harrison,  
Director

SUBJECT: Personnel Requirement,  
Uniform Permit Procedure  
December 9, 1980 Draft

Personnel requirements necessary to administer the Uniform Permit Procedures are estimated below. The method used in the calculation is clearly presented. The results of the estimation are in addition to the two people request associated with the proposed unit and plan of operation regulations.

The estimate is organized into four topics: analysis of 1980 data; projection of 1980 data to 1981; identification of procedures not presently used which will become necessary with this formal method and percent of applications affected; calculation of personnel requirements.

## I. ANALYSIS OF APPLICATIONS RECEIVED AT DNEM IN 1980:

Total Processed: 340

TYPE	OIL AND GAS	MINING
Class I	119	81*
Class II	134	6

\* There was an increase in 1980 of 13,500 mining claims, bringing total claims to 35,000. If only 10% of those 1980 claims file MLUP Class I applications this spring - and the proposed regs would require 100% to file - 1350 applications at a minimum could be expected. Average processing time per application was estimated by the LMT that has sole responsibility for processing this type of application at 8 hrs each. Using 4 hrs \* 1350 applications = 5,400 hours. An estimate of 1750 hours per man per year yields 3+ positions. These positions were already requested in the 1982 budget.

## Determination of Mean time for processing applications in 1980:

Petroleum Engineer	1750 hours
Coastal Zone Management	1750
Land Management Technician	1750
Petroleum Geophysicist	1000
Total processing time for 1980:	6250 hours

6250 hr	=	18.4 hours per application
340 applications	=	mean processing time

II. PROJECTION ESTIMATE FOR APPLICATIONS IN 1981.

Estimate: 390-460 applications

\* \* See attached graph \* \*

Note: This ignores the increase in mining MLUP activity noted earlier.

III. IDENTIFICATION OF PROCEDURES NOT PRESENTLY REQUIRED AND ASSOCIATED ESTIMATES.

- o Give written notice to applicant within 15 days or 30 days if additional information is necessary.  
Percent applications affected: 50%  
Time: \* 1 hour Net Effect: 1 hr x 0.50 = 0.5
- \* Time includes researching, writing, typing, proofing and final copy preparation.
- o Establish and keep track of deadlines, starting and stopping the deadline clock (sec. 30 & throughout)  
Percent applications affected: 100%  
Time: 1 hour Net Effect: 1 x 1.00 = 1 hr
- o Determine whether to hold a hearing & carry out decision, notify applicant (sec 50).  
Percent applications affected: 10% (see attached list of 1980 applications where some 30 applications out of the 340 considered controversial have been highlighted)  
Time: 4 hours Net Effect: 4 x 0.1 = 0.4 hr
- o Serve a copy of permit decision on applicant, resource agencies or anyone who has submitted request for it (sec. 60)  
Percent applications affected: 100%  
Time: 1 hour Net Effect: 1 x 1.0 = 1 hr
- o Prepare justification of decision if testimony opposed to decision presented at hearing (sec 100).  
Percent applications affected: 10%  
Time: 4 hours Net Effect: 4 x 0.1 = 0.4 hr
- o Serve justification of decision on everyone within 5 days if decision appealed (sec 100)  
Percent applications affected: 5%  
Time: 1 hour Net Effect: 1 x 0.05 = NIL

- o Give public notice at least twice for Class II, with summary of proposed activity (sec. 120)  
Percent applications affected: (140/340) 40%  
Time: 3 hr Net Effect: 3 x 0.40 = 1.2 hr
- o Prepare a separate staff recommendation (sec. 140)  
Percent applications affected: (140/340) 40%  
Time: 8 hrs Net Effect: 8 x 0.40 = 3.2
- o Hold preissuance conference at applicant's request (sec. 150) prepare memorandum of meeting.  
Percent applications affected: 50%  
Time: 4 hrs Net Effect: 4 x 0.5 = 2.0 hr
- o Prepare formal agency decision with findings, conclusions in support of decision; a detailed justification of decision process (sec. 160)  
Percent applications affected: (140/340) 0.40%  
Time: 15 hrs Net Effect: 15 x 0.4 = 6.0 hr
- o Consider requests for stay of agency decision pending appeal, serve request on everyone, rule on request within 10 days after other parties have served responsive memorandum (sec. 630).  
Percent applications affected: (140/340) x 0.50 = 20%  
Time: 4 hrs Net Effect: 4 x 0.20 = 0.8 hr.
- o Within 10 days after appeal filed, decide whether to hear appeal (sec. 640).  
Percent applications affected: 20%  
Time: 2 hr Net Effect: 2 x 0.2 = 0.4 hr.
- o If Class B hearing request granted, publish notice within permit area, serve notice on everyone who received 1st, agency decision, receive petitions for intervention and objections to intervention petitions, decide whether to grant intervention petition w/in 10 days (sec. 640).  
Percent applications affected: 5%  
Time: 8 hrs Net Effect: 8 x 0.05 = 0.4 hr
- o Make summary decision in some cases on Class A brief, may serve notice further brief required (sec. 710)  
Percent applications affected: 5%  
Time: 1 hr Net Effect: 1 x 0.05 = NIL
- o Oral hearing after second Class A brief, serve decision on parties  
Percent applications affected: 5%  
Time 2 hrs Net Effect: 2 x 0.05 = 0.1 hr

TOTAL WEIGHTED - AVERAGE PROCESSING  
TIME INCREASE PER APPLICATION

16.5 hours

#### IV. CALCULATION OF PERSONNEL REQUIREMENTS

Expected application load in 1981: 390-460

Increased permit time per application: 16.5 hours

1981 increased workload: 6435 - 7590 hours  
3.7 - 4.34 people

Net Requirement: 4 people

- 1 Clerk-Typist
- 1 CZM (MA II)
- 1 DPC III
- 1 LMT I

The above request for four people is in addition to those currently assigned to the permit process at DMEM (see attached organization chart). Tasks which the Uniform Permit Procedures require similar to those already being performed at DMEM are listed below.

- o Carry out interagency review
- o Review applicant's written response to other agencies' written comments.
- o Keep record file on application.
- o For disposal within coastal zone, ask for comments on consistency issue in both .305 and .345 notice.
- o Prepare informal brief for Commissioner in event of appeal of decision.

Given the number of deadlines in the proposed regulations, it is obvious we would receive benefit from developing a computer monitoring process of the applications. I have not included a request here for these funds since I am not sure to what extent ALARS could help with this, or indeed, what the final regulations will require. I would not expect the amount to be extraordinarily large, however.

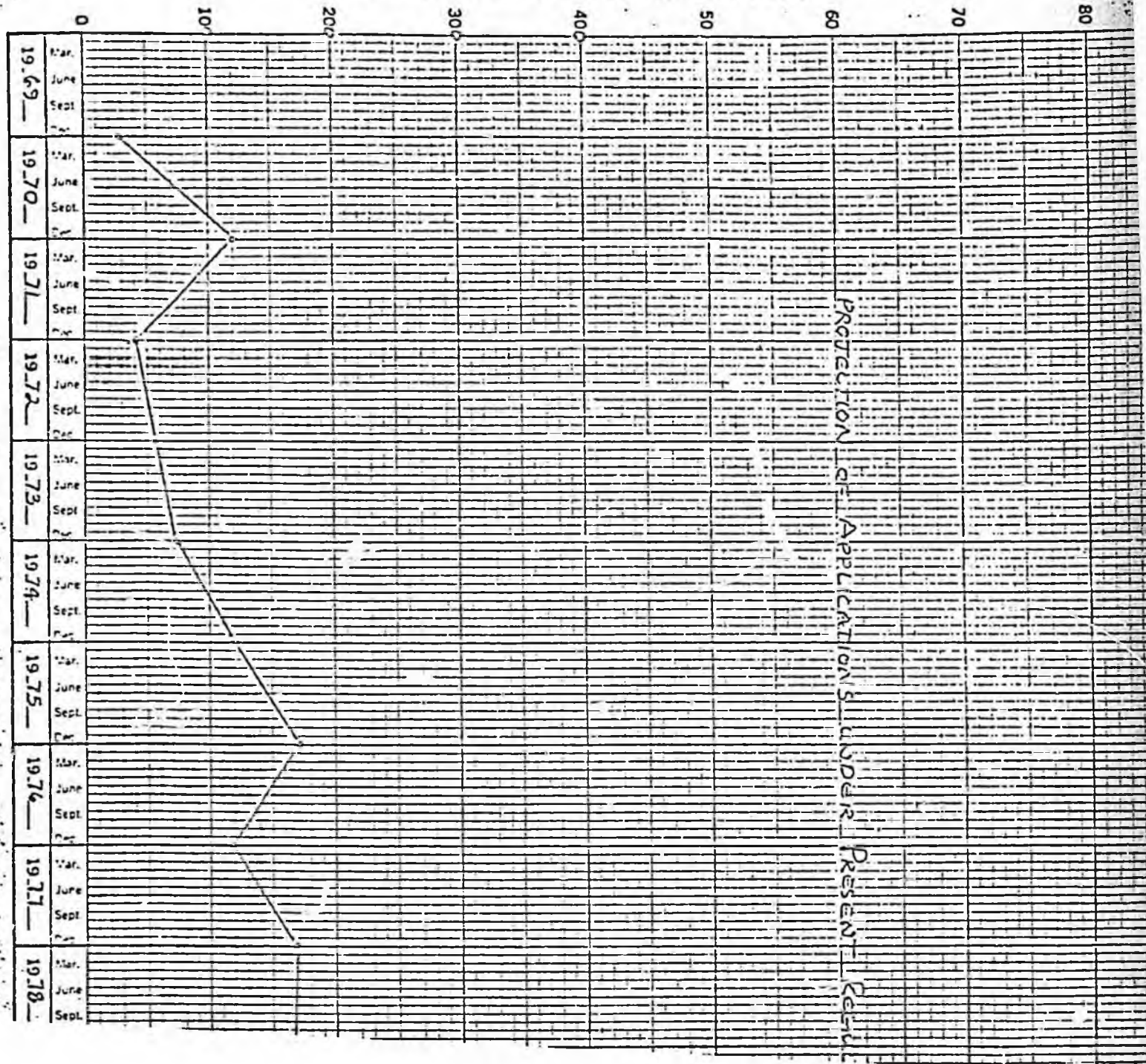
Please let me know if you need further information.

#### Attachments

cc: David Rogers - two copies  
Mary Halloran  
Kay Brown  
Bill Van Dyke  
Laurel Murphy  
Mary Kaye Hession

GH/mab

### APPLICATIONS RECEIVED AT DMEM

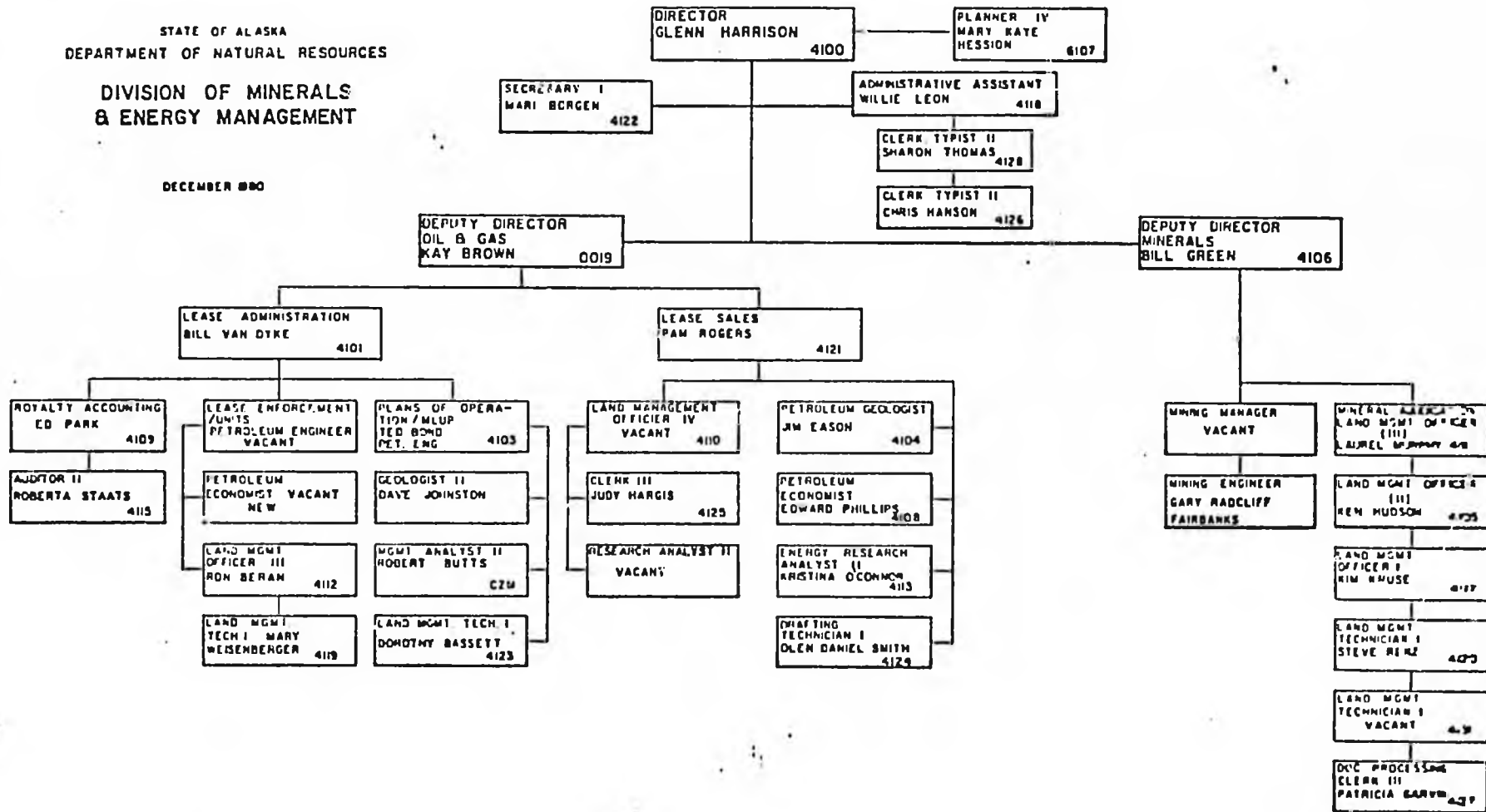


PROTECTION OF APPLICATION SLIPPER PRESENT RESULT

STATE OF ALASKA  
DEPARTMENT OF NATURAL RESOURCES

DIVISION OF MINERALS  
& ENERGY MANAGEMENT

DECEMBER 1990



REGULATORY REFORM

The Alaska State Chamber supports regulatory reform legislation which will generate consistent, non-duplicative regulations and processes for issuance of state permits which will create a clearly defined method of permit procedure and which will encourage and help the business climate within the state of Alaska.

The Alaska State Chamber believes that unless the state government assumes the role of cooperation and support rather than simply regulation and policing, we will not have a climate that will encourage establishment of new industry or economic viability for industries already operating in the state.

- 1) *McConby reports - 1977*
- 2) *Le Peseck letter of April 2, '80*

- 3) *Fran Ulmer letter*
- 4) *Hammond letter Aug 10, '80*
- 5) *AODA - report Dec. 31, 1980*

JANUARY 26, 1982 COMPROMISE PROPOSAL FOR HCS CSSB-84 (LABOR AND COMMERCE)

*Need fiscal note from DNR - Mary Holleran*  
*See A.S. - no tillage*

Section 1. FINDINGS. The legislature finds that

- 6) *Hammond letter Jan 27, 1981*
- 7) *May 15, 1981 - Gilbert letter*
- 8) *Fuller letter - Rec. & review - 5/1/81*
- 9) *AODA letter 5/29/81 to Fuller*
- 10) *AODA letter 6/14, 81 to Fuller*
- 11) *J. Reinwand - 6/22/1981 - to London.*
- 12) *Bill that pass - Senate SB-84 -*
- 13) *Bill 6/22/81 -*
- 14) *Bill of 6/23/81*
- 15) *Analysis of Jan 26, 82 CS for SB84*

*Schedule for Fri. - Feb 15*

(1) the orderly development of state resources is being unnecessarily delayed by the length of time required to obtain permits from state agencies, by the complexity of the permitting process, and by the number of agencies involved in the permitting process;

(2) the uncertainties created by the lack of specific time limits, the proliferation of agency reviews, the number of agencies involved in the permit process, and unjustified agency requirements upon the processing of permit applications have cost Alaskans millions of dollars in lost employment and higher prices;

(3) the public interest has not been advanced by protracted delay in the processing of permit applications by state agencies;

(4) By reducing the number of agencies and agency reviews involved in the permit process, and by requiring state agencies to process permit applications in an expeditious manner, the social, economic, and environmental health and well-being of Alaska citizens will be promoted;

(5) there are many administrative orders and similar documents that have been promulgated by the executive branch relating to interagency review that conflict and overlap, retarding the permit issuing process.

*Leave Sec. 2 out  
as separate adn.*

\* Section 2. AS 44.62.330(a) is hereby amended as follows:

(a) Except as provided in Article 8A of this Chapter, the [The] procedure of the State Boards, Commissions, and Officers listed in this Subsection or their successors by reorganization under the constitution shall be conducted under AS 44.62.330 - 44.62.630. This procedure, including, but not limited to, accusations and statements of issues, service, notice and time and place of hearing, subpoenas, depositions, matters concerning evidence and decisions, conduct of hearing, judicial review and scope of judicial review, continuances, reconsideration, reinstatement or reduction of penalty, contempt, mail vote, oaths, impartiality, and similar matters shall be governed by AS 44.62.010 - 44.62.650, notwithstanding similar provisions in the statutes dealing with the state boards, commissions, and officers listed. Where indicated, the procedure that shall be conducted under AS 44.62.330 - 44.62.630 is limited to named functions of the agency.

(1) Repealed by § 5 ch 159 SLA 1980.

(2) Board of Chiropractic Examiners

(3) Board of Dental Examiners

(4) State Board of Registration for Architects,  
Engineers and Land Surveyors

(5) Repealed by § 13 ch 218 SLA 1976.

(6) Board of Examiners in Optometry.

(7) Repealed by § 5 ch 159 SLA 1980.

- (8) State Medical Board
- (9) Division of Lands under Alaska Land Act where applicable
- (10) Board of Nursing
- (11) Board of Pharmacy
- (12) Board of Public Accountancy
- (13) Department of Labor as to functions relating to employment security only as provided in (c) of this section
- (14) Real Estate Commission
- (15) Alaska Workers' Compensation Board, where procedures are not otherwise expressly provided by the Alaska Workers' Compensation Act
- (16) Department of Transportation and Public Facilities, as to functions relating to aeronautics and communications
- (17) Repealed by § 12 ch 131 SLA 1980.
- (18) Repealed by § 49 ch 94 SLA 1980.
- (19) Repealed by § 54 ch 169 SLA 1978.
- (20) Department of Revenue, under Cigarette Tax Act
- (21) Repealed by § 54 ch 169 SLA 1978.
- (22) Repealed by § 11 ch 181 SLA 1976.
- (23) Department of Public Safety, as to suspension or revocation of a security guard's license under AS 18.65.400 - 18.65.490
- (24) Department of Health and Social Services, under AS 47.35.010 - 47.35.080, relating to boarding and foster homes for children

(26) Repealed by § 4 ch 120 SLA 1971.

(27) Department of Health and Social Services and Department of Environmental Conservation under Alaska Food, Drug, and Cosmetic Act (AS 17.20.010 - 17.20.380) and Department of Health and Social Services in connection with the licensing of embalmers under AS 08.44.010

(28) Department of Health and Social Services and the Hospital Advisory Council, under AS 18.20.010 - 18.20.130

(29) Repealed by § 4 ch 120 SLA 1971.

(30) Department of Environmental Conservation, under AS 18.30.010 - 18.35.090, concerning the regulation of tourist and trailer camps, motor courts, and motels

(31) Repealed by § 40 ch 206 SLA 1975.

(32) Repealed by § 4 ch 106 SLA 1970.

(33) Board of Marine Pilots

(34) Alaska Police Standards Council

(35) Guide Licensing and Control Board

(36) Board of Dispensing Opticians

(37) Repealed by § 20 ch 110 SLA 1981.

(38) Expired.

(39) Alaska Public Offices Commission

(40) Board of Fisheries

(41) Board of Game

(42) the Department of Education and the Professional

Teaching Practices Commission with regard to proceedings to revoke or suspend a teacher's certificate under AS 14.20.030 - 14.20.040 and AS 14.20.470(a)(4)

(43) Alaska Commission on Postsecondary Education under AS 14.48.010 - 14.48.210 as to denial of applications and revocation of authorizations and permits.

(44) Department of Environmental Conservation, except to the extent that AS 44.62.360 - 44.62.400 are inconsistent with the manner in which proceedings are initiated under the provisions of AS 46.03.010 - 46.03.900

(45) University of Alaska, except to the extent that its inclusion is inconsistent with the provisions of AS 14.40.010 - 14.40.960

(46) Department of Commerce and Economic Development concerning the fisheries enhancement loan program (AS 16.10.500 - 16.10.620)

(47) Board of Psychologist and Psychological Associate Examiners (AS 08.86.010)

(48) the Department of Fish and Game as to functions relating to the protection of fish and game under AS 16.05.870

(49) Board of Veterinary Examiners (AS 08.98.010)

(50) Board of Nursing Home Administrators (AS 08.70.010)

(51) Board of Barbers and Hairdressers (AS 08.13.010).

\* Sec. 3. AS 44.62 is amended by adding new sections to read:

ARTICLE 8A. PERMIT PROCESSING.

[Sec. 44.32.632.] PERMIT CLASSIFICATION. (a) Each state resource agency shall by regulation classify each of the permits issued by that agency within one of the two following categories:

(1) class I permits, for which the state agency must issue a final decision within 30 days after the date of receipt of a completed permit application; and

(2) class II permits, for which, because of a necessary public notice or interagency review period, a final decision cannot be issued within 30 days. A final decision on a class II permit must be issued within 45 days after the date of receipt of a completed permit application.

(b) Final regulations classifying its permits, and uniform procedural regulations providing for the processing of these permits, shall be adopted by each state resource agency by October 1, 1982, following appropriate notice and hearing. Permits applied for after October 1, 1982 must be issued in accordance with the time periods specified in (a) of this section, and the provisions of the implementing regulations.

Sec. 44.62.633. OTHER REGULATORY REQUIREMENTS FOR  
PERMIT PROCESSING.

(a) Upon a finding by the head of a resource agency that a permit being considered involves unusually complex issues so that the agency cannot render a final decision within the time period specified in AS 44.62.632(a), the head of the agency may prescribe a time period within which the final decision will be made. The finding of the head of the agency may be appealed by the applicant to the superior court under the Appellate Rules of Procedure. In no event may the time period be extended more than 120 days beyond the time period specified in AS 44.62.632(a).

(b) The time period specified in AS 44.62.632(a) may be extended if necessary to facilitate joint processing of a permit application through memoranda of understanding between state and federal agencies, but only if strict adherence to the time periods established in AS 44.62.632(a) would pose an irreconcilable conflict with a federal statute or regulation.

(c) Subject to (a) and (b) of this section and AS 44.62.634, failure of a resource agency to make a final decision within 30 days after the receipt of a completed permit application for a class I permit, or within 65 days after the receipt of a completed permit application for a class II permit, constitutes approval of the application. In an

appeal of a permit issued by operation of this subsection, the record shall be construed in a light most favorable to the applicant, and the permit shall be accorded a presumption of regularity.

(d) A state agency may not condition the issuance of a permit upon the issuance of a permit from another governmental agency.

Sec. 44.62.634. ADDITIONAL INFORMATION. (a) If a resource agency receives a completed permit application which does not contain sufficient information concerning the project's compliance with the agency's statutes and regulations, the agency shall notify the applicant within 15 days after receipt of a completed permit application for a class I permit, and within 30 days after receipt for a class II permit.

(b) The notification must specify those particular facts or issues concerning the proposal upon which the agency requires additional information in order to determine whether the project will conform with the agency's statutes and regulations;

(c) If a timely request under subsections (a) and (b) of this section is made, the time period specified in AS 44.62.632 is suspended from the date of request to the date of full compliance with the request. Subsequent requests for additional information may be made, but must relate only to new issues raised by the response to the initial notification. Subsequent requests shall not extend the time periods specified in AS 44.62.632.

(d) Nothing in this section shall be construed as granting any resource agency the authority to request information beyond the authority given to it by other statutory provisions.

Section 44.62.635. LEAD AGENCY. (a) [For each class of activity permitted in the state] there is established a lead agency which is solely responsible for <sup>MAKING</sup> ~~issuing~~ coastal management consistency determinations under AS 46.40 and for preparing and submitting state comments on federal permit applications. The lead agency shall be that resource agency having principal responsibility for authorizing the overall activity, including instances where an activity requires permits from more than one resource agency. For classes of activities for which no agency with principal responsibility exists the governor shall designate a resource agency to be a

*Preferred*

(b) Substantive consideration shall be given to the *Substantive* comments of resource agencies and to the Office of Coastal Management within their primary areas of expertise, and also to the *Substantive* comments of coastal resource districts made *under* ~~pursuant~~ to an approved district coastal management program.

The lead agency shall consider opinions, conclusions or recommendations submitted by the commenting agency, but may, in its discretion, reach contrary opinions, conclusions or recommendations according to the evidence received.

The lead agency shall then

balance competing factors in reaching its final decision.

No resource agency other than the lead agency has primary expertise in the balancing of competing factors.

balance competing factors in reaching its final decision.

No resource agency other than the lead agency has primary expertise in the balancing of competing factors.

(c) No state agency other than the lead agency may comment to a federal permitting agency.

(d) An agency's completion of a review under § 401 of <sup>Corp of Engineers</sup> the Clean Water Act (33 USC § 1341) does not constitute that agency as a lead agency hereunder.

Section 44.62.636. COMMENT PERIOD. A coastal resource district or state agency which receives a request for comment in connection with a permit application or plan review being processed by a resource agency shall submit such comments in accordance with the following schedule:

(1) Comments on class I permits shall be submitted within 15 days of the agency's receipt of the request;

(2) Comments on class II permits and federal permits shall be submitted within 30 days of the agency's receipt of the request;

(3) Where, pursuant to AS 44.62.633, the requesting agency has extended the time periods specified in AS 44.62.632, that agency may extend the time period specified in this section for up to an additional 30 days.

(a)

Sec. 44.62.637. ADMINISTRATIVE APPEALS. The uniform procedural regulations promulgated pursuant to AS 44.62.632(b) shall provide for an administrative appeal from a final decision on a permit application. (b) The appeal must be resolved within 45 days of the final decision, or, if a hearing is held on the appeal, within 65 days of the final decision. Such appeal shall be to the head of the ~~the~~ resource agency involved. An appeal taken from a decision granting a permit shall not necessarily stay the issuance of the permit in question. The head of the agency may summarily dismiss an appeal before the time established herein, and such dismissal shall be the final agency action on the matter. If the public interest is so served, in an appeal from the denial or conditioning of a permit the head of the ~~the~~ agency may grant the permit or remove conditions thereon pending the outcome of the appeal.

Sec. 44.62.633. REVIEW BY THE SUPERIOR COURT. (a) Judicial review by the superior court of a final decision issued pursuant to Article 8A of this chapter may be had by filing a notice of appeal in the superior court in accordance with the applicable rules of appellate procedure. The right to appeal is not affected by the failure to seek further review pursuant to AS 44.62.637. The review shall be governed by the provisions of AS 44.62.560(b) - (e) and AS 44.62.570.

(b) An appeal taken under this section has preference on the calendar of civil actions before the court and shall be decided without unnecessary delay.

\* Sec. 4. AS 44.62.640 is amended by adding a new subsection to read:

(c) As used in AS 44.62.632 - 44.62.635,

(1) "date of receipt" means the date on which a state agency actually receives a completed application filed in accordance with agency regulations and at a place identified as appropriate for filing in the agency's regulations;

(2) "permit" means a permit, license, certification, consistency determination, or other authorization or approval issued by a resource agency as a written document that is required to be obtained or is solicited from a state agency before the construction or operation of a project; "permit" does not include the approval of a unit agreement, a unit development plan, or a unit exploration plan, or conveyances of interest in state land or water, but does include all authorizations and approvals, whether proprietary or regulatory, necessary to undertake a project under a previously conveyed property interest;

(3) "project" means a new activity or expansion or addition to an existing activity for which permits are required before construction or operation; "project" does not include pursuing a trade or profession, providing public health service or operating a financial institution;

(4) "resource agency" means the Department of Natural Resources, the Department of Environmental Conservation, and the Department of Fish and Game with respect to permits issued for the protection of fish habitat or the regulation of state sanctuaries, refuges, and critical habitat areas;

*delete*  
*5*  
~~46.40~~ (5) "substantive consideration" means that, (where documented factual statements or data are submitted by a resource agency or a coastal resource district, those statements or data shall be deemed true unless the lead agency or permit applicant refutes such statements or data by a preponderance of the evidence.)

\* The lead agency shall consider opinions, conclusions or recommendations submitted by the commenting agency, but may, in its discretion, reach contrary opinions, conclusions or recommendations according to the evidence received.

May we have your written testimony?

Problems

Ray Gilbratt -

2) Too Duplication

3) Interlocking well.

4) Employee attitudes and policies

5) Many small problems make big problems

---

\* Mr. Jay Nelson

Oppose to Bill -

\* Have you been in the area previously? \*

Have you seen the proposed reg.

Adm. bill

---

Dave Allison - Ab. Environmental  
threat to stop everything.

Were you in negotiation of the draft -  
'legislatively' accept.

---

Mollie Dent -

need copy -

---

Joyce Munson

Personnel Council - permit procedures  
Strongly against uniform <sup>permit</sup> ~~local~~ revision →

Teleconference

---

Larry Edwards

Sitka.

favors administrative procedures -

Jim Clark. -