

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILES 86/2
495 SCOMM14: JOINT GAS PIPELINE COMM. (FINANCING) 1979-80 495

EF Hutton

One Battery Park Plaza
New York, New York 10004
Telephone (212) 742-5000

November 19, 1979

The Honorable Bill Walker
Mayor
City Hall
Valdez, Alaska 99686

Dear Mayor Walker:

E. F. Hutton & Company Inc. ("E. F. Hutton") is pleased to confirm its commitment to purchase from the City of Valdez, Alaska (the "Issuer"), on the terms and conditions set forth in this letter, certain issues of economic development bonds (the "Bonds") aggregating up to \$600,000,000, the proceeds of which are to be loaned or otherwise provided to The Alpetco Company (the "Company") in connection with the acquisition, construction and development of that portion of a petroleum refinery to be located in Valdez, Alaska, which may be financed with tax-exempt bonds.

E. F. Hutton will undertake to form an underwriting syndicate for the purpose of reoffering the Bonds to the general public or institutional investors. The price at which each issue of the Bonds will be purchased from you, the price at which they will be reoffered, the respective maturities and the other material terms of the Bonds will be fixed and agreed upon between E. F. Hutton and the Company at such time as the Bonds are available for re-offering. All material terms of the indenture of trust, the loan agreement or other financing agreement and any other security arrangements relating to the Bonds will be subject to the approval of the City.

Prior to the purchase of any issue of the Bonds, the Company in cooperation with the City must provide E. F. Hutton with an official statement for the reoffering of



The Honorable Bill Walker
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the Bonds, and all other necessary information and materials as may be necessary for use therein in order that the official statement will fairly state the material facts relating to the offer and sale of the Bonds and relating to the description of the Company, including financial statements and other matters as may be required.

The obligations of E. F. Hutton shall be subject to the due performance of the following conditions:

- (1) Receipt of an unqualified and approving legal opinion of bond counsel;
- (2) Receipt of a legal opinion in a form satisfactory to E. F. Hutton from counsel to the Company as to the Company's participation in the transactions relating to the issuance of the Bonds;
- (3) Receipt of a legal opinion of counsel for the underwriters approving the underlying documents and offering materials and compliance with applicable rules and regulations of the Securities and Exchange Commission;
- (4) Receipt of all documents as may be reasonably required by E. F. Hutton or its counsel to evidence that the obligations undertaken by the Company are legal, valid and binding obligations;
- (5) Receipt from Standard & Poor's Corporation of an investment grade rating on the Bonds;
- (6) Receipt of such other certificates and documents as are customarily delivered in connection with an offering of industrial development bonds in the State of Alaska; and
- (7) Agreement by the Company to maturity schedules, interest rates and other terms which are commercially reasonable given all of the facts and circumstances prevailing at the time the Bonds are available for reoffering.

E. F. Hutton shall have the right to cancel its obligation to purchase the Bonds prior to the closing of any of such issues if (1) any event shall have occurred which

Hutton

The Honorable Bill Walker
November 19, 1979
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would adversely affect the business or earnings of the Company or the feasibility of the Project; (2) any event shall have occurred which in the opinion of counsel to E. F. Hutton makes untrue or misleading in any material respect the statements in the official statement; (3) there shall have occurred any national calamity or any conflict involving the armed forces of the United States of America of such a magnitude as to markedly adversely affect the ability of the Underwriter to reoffer the Bonds; (4) there shall have been entered a stop order, ruling or regulation by the Securities and Exchange Commission or other Federal or state governmental agency making the sale of the Bonds or any similar class of securities a violation of law; or (5) the Congress of the United States or the Internal Revenue Service or the Treasury Department shall have proposed or enacted any legislation or proposed or adopted any regulation which would adversely affect the tax-exempt status of the interest on the Bonds.

It is understood that all expenses in connection with the proposed transactions, including fees and expenses of the Company's counsel, bond counsel, your counsel; the cost and expenses of preparing and printing official statements and all necessary documents; blue sky fees and expenses, including the fees of blue sky counsel; and the fees of the investment rating agency, will be paid by the Company whether or not the proposed sales of the Bonds are completed.

Sincerely,

E. F. HUTTON & COMPANY INC.

W. James Lopp II
W. James Lopp II
Executive Vice President

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Partners of The Alpetco Company - \$350,000,000.00

Charter Oil (Alaska), Inc., Alaska Petrochemical Company, and E. F. Hutton (Alaska) Inc. have given The Alpetco Company letters committing to provide \$350,000,000.00 in equity funds for payment of Total Project Costs, as follows:

Charter Oil (Alaska), Inc.	\$245,000,000.00
Alaska Petrochemical Company	81,900,000.00
E. F. Hutton (Alaska) Inc.	23,100,000.00
	<u>\$350,000,000.00</u>

In order to confirm the above companies' commitment to invest \$350,000,000.00 in equity funds, the shareholders of each company have given letters to The Alpetco Company committing to contribute such equity funds to The Alpetco Company.

The letters from Alpetco's partners and letters from the partners' shareholders follow.

Northern

AKI 111 in
ST 25 in
Charter 509 in
EFH 163 in

CHARTER OIL (ALASKA), INC.
208 Laura Street
Jacksonville, Florida 32201
904/358-4395

December 13, 1979

The Alpetco Company
c/o Alaska Petrochemical Company
3700 Buffalo Speedway
Houston, Texas 77098

Dear Sirs:

The undersigned, Charter Oil (Alaska), Inc., is a 70.0% partner in The Alpetco Company ("Alpetco"). Alpetco, a joint venture partnership, was established as of October 1, 1979, by the undersigned, Alaska Petrochemical Company and E. F. Hutton (Alaska) Inc. (collectively, the "Partners") to receive an assignment of the rights and to assume the obligations of Alaska Petrochemical Company under the Agreement for the Sale and Purchase of State Royalty Oil dated February 22, 1978, and amended May 17, 1978 (the "Royalty Oil Contract"), between Alaska Petrochemical Company and the State of Alaska.

The Partners have determined that in order to proceed with the petrochemical and refining project in Alaska ("The Alpetco Project") contemplated by the Royalty Oil Contract, and to assist Alpetco's compliance with Article 10.2(3)(d) of the Royalty Oil Contract, it would be desirable for the Partners to commit to each other to contribute a substantial minimum amount of equity to Alpetco.

Accordingly, in consideration of similar commitments being made on the date hereof by the other Partners to contribute, with the undersigned, as equity up to \$350 million in the aggregate to Alpetco, the undersigned commits to make partnership contributions to Alpetco of up to \$245 million in the aggregate solely for use in connection with The Alpetco Project as its pro rata share of funds requested by Alpetco by thirty days' prior written notice to all its Partners, provided each of the other Partners makes its similar contribution pro rata in accordance with its partnership interest. The commitment of the undersigned hereunder is subject to final approval by the undersigned of the definitive documents relative to the long-term loan of funds for The Alpetco Project and to the execution by December 18, 1980, of such documents by Alpetco and the lenders providing such funds.

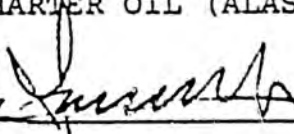
AGO 560007

The above commitment of the undersigned is made solely for the purpose of assisting Alpetco in satisfying the Commissioner of Natural Resources of the State of Alaska as to Alpetco's compliance with Article 10.2c(3)(d) of the Royalty Oil Contract.

Attached hereto are commitments by the sole shareholder of the undersigned in support of the above commitment.

Very truly yours,

CHARTER OIL (ALASKA), INC.

By  _____




The Charter Company
208 Laura Street • Post Office Box 2017
Jacksonville, Florida 32231
Telephone 904-358-4111 • Telex 56-239
December 13, 1979

The Alpetco Company
c/o Alaska Petrochemical Company
3700 Buffalo Speedway
Houston, Texas 77098

Dear Sirs:

The undersigned, The Charter Company, is the 100% shareholder of Charter Oil (Alaska), Inc. which is a 70.0% partner in The Alpetco Company ("Alpetco"). Charter Oil (Alaska), Inc. has made certain commitments today to Alpetco to contribute to Alpetco as equity up to \$245 million ("Charter Oil (Alaska), Inc.'s Equity Commitment") in furtherance of Alpetco's refinery and petrochemical project in Alaska ("The Alpetco Project").

In support of Charter Oil (Alaska), Inc.'s Equity Commitment, the undersigned commits to make investments in Charter Oil (Alaska), Inc., in the form of equity or loans, of up to \$245 million in the aggregate solely as required in respect of Charter Oil (Alaska), Inc.'s Equity Commitment, as and when requested by Charter Oil (Alaska), Inc. by twenty days' prior written notice and subject to final approval by Charter Oil (Alaska), Inc. of definitive documents relating to the long-term loan of funds for The Alpetco Project and to the execution by December 18, 1980, of such documents by Alpetco and the lenders providing such funds.

The above commitment of the undersigned is made solely for the purpose of supporting Charter Oil (Alaska), Inc.'s Equity Commitment, and is not intended for the benefit of any person other than Charter Oil (Alaska), Inc. in respect of Charter Oil (Alaska), Inc.'s Equity Commitment.

Yours very truly,

THE CHARTER COMPANY

By 

AGO 560009

ALASKA PETROCHEMICAL COMPANY

3700 BUFFALO SPEEDWAY

HOUSTON, TEXAS 77098

TELEPHONE 713 840-1243 TELEX 791461

December 13, 1979

The Alpetco Company
3700 Buffalo Speedway
Houston, Texas 77098

Dear Sirs:

The undersigned, Alaska Petrochemical Company, is a 23.4% partner in The Alpetco Company ("Alpetco"). Alpetco, a joint venture partnership, was established as of October 1, 1979, by the undersigned, Charter Oil (Alaska), Inc. and E. F. Hutton (Alaska) Inc. (collectively, the "Partners") to receive an assignment of the rights and to assume the obligations of Alaska Petrochemical Company under the Agreement for the Sale and Purchase of State Royalty Oil dated February 22, 1978, and amended May 17, 1978 (the "Royalty Oil Contract"), between Alaska Petrochemical Company and the State of Alaska.

The Partners have determined that in order to proceed with the petrochemical and refining project in Alaska ("The Alpetco Project") contemplated by the Royalty Oil Contract, and to assist Alpetco's compliance with Article 10.2(3)(d) of the Royalty Oil Contract, it would be desirable for the Partners to commit to each other to contribute a substantial minimum amount of equity to Alpetco.

Accordingly, in consideration of similar commitments being made on the date hereof by the other Partners to contribute, with the undersigned, as equity up to \$350 million in the aggregate to Alpetco, the undersigned commits to make partnership contributions to Alpetco of up to \$81.9 million in the aggregate solely for use in connection with The Alpetco Project as its pro rata share of funds requested by Alpetco by thirty days' prior written notice to all its Partners, provided each of the other Partners makes its similar contribution pro rata in accordance with its partnership interest. The commitment of the undersigned hereunder is subject to final approval by the undersigned of the definitive documents relative to the long-term loan of funds for The Alpetco Project and to the execution by December 18, 1980, of such documents by Alpetco and the lenders providing such funds.

AGO 560010

The above commitment of the undersigned is made solely for the purpose of assisting Alpetco in satisfying the Commissioner of Natural Resources of the State of Alaska as to Alpetco's compliance with Article 10.2c(3)(d) of the Royalty Oil Contract.

Attached hereto are commitments by the principal shareholders of the undersigned in support of the above commitment.

Very truly yours,

ALASKA PETROCHEMICAL COMPANY

By Gordon A. Cairn

ALASKA INTERSTATE COMPANY

P. O. Box 6334

HOUSTON, TEXAS 77005

December 13, 1979

The Alpetco Company
c/o Alaska Petrochemical Company
3700 Buffalo Speedway
Houston, Texas 77098

Dear Sirs:

The undersigned, Alaska Interstate Company, is a 75.45% shareholder of Alaska Petrochemical Company which is a 23.4% partner in The Alpetco Company ("Alpetco"). Alaska Petrochemical Company has made certain commitments today to Alpetco to contribute to Alpetco as equity up to \$81.9 million ("Alaska Petrochemical Company's Equity Commitment") in furtherance of Alpetco's refinery and petrochemical project in Alaska ("The Alpetco Project").

In support of Alaska Petrochemical Company's Equity Commitment, the undersigned commits to make investments in Alaska Petrochemical Company, in the form of equity or loans, of up to \$62,500,000 in the aggregate solely as required in respect of Alaska Petrochemical Company's Equity Commitment, as and when requested by Alaska Petrochemical Company by twenty days' prior written notice and subject to final approval by Alaska Petrochemical Company of definitive documents relating to the long-term loan of funds for The Alpetco Project and to the execution by December 18, 1980, of such documents by Alpetco and the lenders providing such funds.

The above commitment of the undersigned is made solely for the purpose of supporting Alaska Petrochemical Company's Equity Commitment, and is not intended for the benefit of any person other than Alaska Petrochemical Company in respect of Alaska Petrochemical Company's Equity Commitment.

Yours very truly,

ALASKA INTERSTATE COMPANY

By D. Charles Henig



Seatrains Lines, Inc.

Howard M. Pack
Chairman of the Board

1 Chase Manhattan Plaza
New York, New York 10005

Phone: (212) 854-3400

Telex:

International: 232740 (RCA)

421225 (ITT)

Domestic: 710-581-2334 (TWX)

127-396 (WU)

Cables: SHIPTRAMP or OSTCORPO

December 13, 1979

The Alpetco Company
c/o Alaska Petrochemical Company
3700 Buffalo Speedway
Houston, Texas 77098

Dear Sirs:

The undersigned, Seatrain Lines, Inc. is the 100% shareholder of Barbour Oil Company, which is a 22.12% shareholder of Alaska Petrochemical Company which is a 23.4% partner in the Alpetco Company ("Alpetco"). Alaska Petrochemical Company has made certain commitments today to Alpetco to contribute to Alpetco as equity up to \$81.9 million ("Alaska Petrochemical Company's Equity Commitment") in furtherance of Alpetco's refinery and petrochemical project in Alaska ("The Alpetco Project").

In support of Alaska Petrochemical Company's Equity Commitment, the undersigned commits to make investments in Alaska Petrochemical Company, in the form of equity or loans, of up to \$19,500,000 in the aggregate solely as required in respect of Alaska Petrochemical Company's Equity Commitment, as and when requested by Alaska Petrochemical Company by twenty days' prior written notice and subject to final approval by Alaska Petrochemical Company of definitive documents relating to the long-term loan of funds for the Alpetco Project and to the execution by December 18, 1980, of such documents by Alpetco and the lenders providing such funds.

The above commitment of the undersigned is made solely for the purpose of supporting Alaska Petrochemical Company's Equity Commitment, and is not intended for the benefit of any person other than Alaska Petrochemical Company in respect of Alaska Petrochemical Company's Equity Commitment.

Yours very truly,

SEATRIN LINES, INC.

By Howard M. Pack

AGO 560013

E. F. Hutton (Alaska) Inc.
One Battery Park Plaza
New York, NY 10004
212/742-5005

December 13, 1979

The Alpetco Company
c/o Alaska Petrochemical Company
3700 Buffalo Speedway
Houston, Texas 77098

Dear Sirs:

The undersigned, E. F. Hutton (Alaska) Inc., is a 6.6% partner in The Alpetco Company ("Alpetco"). Alpetco, a joint venture partnership, was established as of October 1, 1979, by the undersigned, Alaska Petrochemical Company and Charter Oil (Alaska), Inc. (collectively, the "Partners") to receive an assignment of the rights and to assume the obligations of Alaska Petrochemical Company under the Agreement for the Sale and Purchase of State Royalty Oil dated February 22, 1978, and amended May 17, 1978 (the "Royalty Oil Contract"), between Alaska Petrochemical Company and the State of Alaska.

The Partners have determined that in order to proceed with the petrochemical and refining project in Alaska ("The Alpetco Project") contemplated by the Royalty Oil Contract, and to assist Alpetco's compliance with Article 10.2(3) (d) of the Royalty Oil Contract, it would be desirable for the Partners to commit to each other to contribute a substantial minimum amount of equity to Alpetco.

Accordingly, in consideration of similar commitments being made on the date hereof by the other Partners to contribute, with the undersigned, as equity up to \$350 million in the aggregate to Alpetco, the undersigned commits to make partnership contributions to Alpetco of up to \$23.1 million in the aggregate solely for use in connection with The Alpetco Project as its pro rata share of funds requested by Alpetco by thirty days' prior written notice



One Battery Park Plaza
New York, N.Y. 10004
Telephone (212) 742-5000

December 13, 1979

The Alpetco Company
c/o Alaska Petrochemical Company
3700 Buffalo Speedway
Houston, Texas 77098

Dear Sirs:

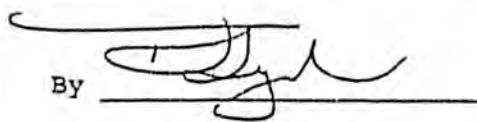
The undersigned, The E.F. Hutton Group Inc., is the 100% shareholder of E.F. Hutton (Alaska) Inc. which is a 6.6% partner in The Alpetco Company ("Alpetco"). E.F. Hutton (Alaska) Inc. has made certain commitments today to Alpetco to contribute to Alpetco as equity up to \$23.1 million ("E.F. Hutton (Alaska) Inc.'s Equity Commitment") in furtherance of Alpetco's refinery and petrochemical project in Alaska ("The Alpetco Project").

In support of E.F. Hutton (Alaska) Inc.'s Equity Commitment, the undersigned commits to make investments in E.F. Hutton (Alaska) Inc., in the form of equity or loans, of up to \$23.1 million in the aggregate solely as required in respect of E.F. Hutton (Alaska) Inc.'s Equity Commitment, as and when requested by E.F. Hutton (Alaska) Inc. by twenty days' prior written notice and subject to final approval by the undersigned of definitive documents relating to the long-term loan of funds for The Alpetco Project and to the execution by December 18, 1980, of such documents by Alpetco and the lenders providing such funds.

The above commitment of the undersigned is made solely for the purpose of supporting E.F. Hutton (Alaska) Inc.'s Equity Commitment and is not intended for the benefit of any person other than E.F. Hutton (Alaska) Inc. in respect of E.F. Hutton (Alaska) Inc.'s Equity Commitment.

Yours very truly,

THE E.F. HUTTON GROUP INC.

By 

The Alpetco Company
December 13, 1979
Page 2

to all its Partners, provided each of the other Partners makes its similar contribution pro rata in accordance with its partnership interest. The commitment of the undersigned hereunder is subject to final approval by the undersigned of the definitive documents relative to the long-term loan of funds for The Alpetco Project and to the execution by December 18, 1980, of such documents by Alpetco and the lenders providing such funds.

The above commitment of the undersigned is made solely for the purpose of assisting Alpetco in satisfying the Commissioner of Natural Resources of the State of Alaska as to Alpetco's compliance with Article 10.2c(3)(d) of the Royalty Oil Contract.

Attached hereto are commitments by the sole shareholder of the undersigned in support of the above commitment.

Very truly yours,

E. F. HUTTON (ALASKA) INC.

By *W. F. Hutton II*

Article 10.2(3)(e)

"Obtain a commitment or commitments for interim financing for the construction of the petrochemical facility."

Chemical Bank (New York) and Manufacturers Hanover Trust Company have been named co-agent banks to provide a line of credit for payment of interim construction costs of non-tax exempt financed costs of the project. Alpetco's financial projections and funding schedule (attached Exhibit e-1) indicates that the maximum line of construction financing needed is \$ 92,500,000.00. The banks' commitment letters, totaling \$150,000,000.00, are attached.

In addition to the above \$150,000,000.00, up to \$600,000,000.00 in interim funds for construction costs for items qualifying for tax exempt financing will be provided by serialized take-down of the tax exempt bonds. A letter from Kutak, Rock & Huie, underwriter's counsel, explaining this procedure, is enclosed.

While we have provided for interim financing if needed, it is possible that the partners will determine to contribute the total equity required during the early months of construction, thus eliminating the need for interim construction financing. A funding schedule indicating this possibility is attached as Exhibit e-2.

We believe we have fully complied with this benchmark requirement.

much less than anticipated

CHEMICAL BANK

Energy & Minerals Division
277 Park Avenue, New York, NY 10017, Tel (212) 922-6936

Everett M. Schenk
Vice President

December 11, 1979

The ALPETCO Company
3700 Buffalo Speedway
Suite 806
Houston, TX 77096

Dear Sirs:

During recent discussions with representatives of the owners of The ALPETCO Company ("ALPETCO"), ALPETCO requested that Chemical Bank and Manufacturers Hanover Trust Company ("the Banks") submit a letter or letters to ALPETCO outlining each Bank's commitment to lend up to \$75 million in interim construction funds to ALPETCO in connection with ALPETCO's proposed plans to build a petrochemical and oil refining complex in Valdez, Alaska.

With reference to these discussions, we are pleased to confirm that we will participate in the amount of \$75 million in such a \$150 million facility, subject to our satisfaction with the following items:

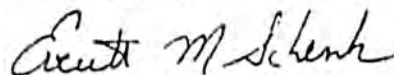
1. Our review of the economic projections and the underlying assumptions which demonstrate the viability of the project. 
2. The availability of guarantees and undertakings from various parties covering completion of the project, construction of the project, and cost overruns which may occur during the life of the project.
3. The continuance in effect of the Alaska Royalty Crude Oil Contract; the continued fulfillment in accordance with their terms of all agreements and obligations of the parties contained therein; and assurance that the Alaska petroleum reserves available to ALPETCO under the Contract are adequate to support all project financing.

4. The final written form of the ALPETCO joint venture agreement among E. F. Hutton (Alaska) Inc., Alaska Petrochemical Company and Charter Oil (Alaska) Inc.
5. The availability to ALPETCO of sufficient equity to complete the project as presently contemplated, whether through the sale of royalty crude oil or otherwise.
6. Sufficient collateral and undertakings as may be necessary to assure repayment of the construction loans.
7. The availability from responsible lenders or permanent financing sufficient to provide a complete "take-out" for the interim bank construction financing.
8. The commitment of Manufacturers Hanover Trust Company to become a party to the bank credit facility pursuant to which it will make available an amount equal to the amount to be provided by this bank.

The foregoing financing is, of course, subject to our satisfaction with the above requirements and with any other matters that may become relevant from a banking point of view and, by December 18, 1980, our entering into with you a definitive credit agreement containing such terms (including a satisfactory interest rate) and such representations and warranties, conditions, covenants, and events of default and other provisions as may be relevant in the circumstances.

If we may be of further assistance to you in this matter, please do not hesitate to call me.

Sincerely,



Everett M. Schenk
Vice President



MANUFACTURERS HANOVER TRUST COMPANY

350 PARK AVENUE, NEW YORK, N. Y. 10022

December 10, 1979

The ALPETCO Company
3700 Buffalo Speedway
Suite 806
Houston, TX 77096

Dear Sirs:

During recent discussions with representatives of the owners of The ALPETCO Company ("ALPETCO"), ALPETCO requested that Chemical Bank and Manufacturers Hanover Trust Company ("the Banks") submit a letter or letters to ALPETCO outlining each Bank's commitment to lend up to \$75 million in interim construction funds to ALPETCO in connection with ALPETCO's proposed plans to build a petrochemical and oil refining complex in Valdez, Alaska.

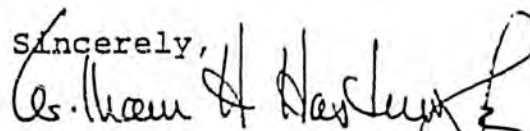
With reference to these discussions, we are pleased to confirm that we will participate in the amount of \$75 million in such a \$150 million facility, subject to our satisfaction with the following items:

1. Our review of the economic projections and the underlying assumptions which demonstrate the viability of the project.
2. The availability of guarantees and undertakings from various parties covering completion of the project, construction of the project, and cost overruns which may occur during the life of the project.
3. The continuance in effect of the Alaska Royalty Crude Oil Contract; the continued fulfillment in accordance with their terms of all agreements and obligations of the parties contained therein; and assurance that the Alaska petroleum reserves available to ALPETCO under the Contract are adequate to support all project financing.

4. The final written form of the ALPETCO joint venture agreement among E.F. Hutton (Alaska) Inc., Alaska Petrochemical Company and Charter Oil (Alaska) Inc.
5. The availability to ALPETCO of sufficient equity to complete the project as presently contemplated, whether through the sale of royalty crude oil or otherwise.
6. Sufficient collateral and undertakings as may be necessary to assure repayment of the construction loans.
7. The availability from responsible lenders of permanent financing sufficient to provide a complete "take-out" for the interim bank construction financing.
8. The commitment of Chemical Bank to become a party to the bank credit facility pursuant to which it will make available an amount equal to the amount to be provided by this bank.

The foregoing financing is, of course, subject to our satisfaction with the above requirements and with any other matters that may become relevant from a banking point of view and, by December 18, 1980, our entering into with you a definitive credit agreement containing such terms (including a satisfactory interest rate) and such representations and warranties, conditions, covenants and events of default and other provisions as may be relevant in the circumstances.

Sincerely,



William H. Hastings Jr.
Assistant Vice President

KUTAK ROCK & MUIE

THE OMAHA BUILDING

1650 FARNAM STREET

OMAHA, NEBRASKA 68102

(402) 346-6000

December 11, 1979

ROBERT J. KUTAK
HAROLD L. ROCK
WILLIAM G. CAMPBELL
ALLAN JAY GARFINKLE
THOMAS A. WOODWARD
GLEN A. BURBRIDGE
RIF TO L. WEILL
JL L. MUSELMAN
WALACE H. JOHNSON
RICHARD A. SPELLMAN
STEVEN S. HUFF
GREGORY DUBOIS ERWIN
THOMAS J. MCUSKER
GEORGE H. KRAUSS
MAUREEN E. MCGRATH
HUGH W. McNULTY, JR.
KENNETH J. STUART
DIRK W. GEROOS
ANGELO P. PARKER
J. MICHAEL GOTTSCALK
KENNETH E. ILTZ
JAMES D. ARUNDEL
JOHN J. WAGNER
DONALD J. KRESS
DANIEL S. HOROWITZ
PAUL R. TILFT
RONALD T. PFEIFER
GREGORY W. SEARSON
JOHN E. HUBBARD
HARRY D. DIXON, JR.
JOE E. ARMSTRONG
WILLIAM E. HOLLAND
RICHARD O. CIMINO
GARETH G. MORRIS
HAVEN H. S. PELL
PAUL D. BUDD
JOEL T. BOENH
TERRENCE J. FERGUSON
C. GREGORY M. EDEN
LARRY L. CARLILE
SARAH J. PENN

LAUREN M. RONALD
PATRICIA J. WINTER
LINSEY MILLER LERMAN
JOYCE A. DIXON
DIANNE L. STODARD
TIMOTHY J. KINCAID
JOHN C. MINAHAN, JR.
FRED M. GREGURAS
PAUL E. BELITZ
DENIS P. BURKE
SCOTT C. HOYT
DANIEL S. REYNOLDS
DAVID A. JACOBSON
P. THOMAS FOGGE
J. THOMAS MARTEN
D. CHARLES SHOEMAKER
KENNETH R. DODDS
WALTER L. GRIFFITHS
THOMAS B. HOLLEY
JO E. BASS
FRANK A. TAYLOR
RANDALL R. ELEY
CURTIS L. CHRISTENSEN
MICHAEL L. CURRY
LOREN E. DESSONVILLE
DAWN R. DUVEN
JANE ERDENBERGER
FELICIA O. FLOWERS
LYNNE A. FRIEDWALD
DENNIS L. HOLZAPFLE
FRANK M. SCHEPERS
JULIA G. GINSBURG
CLIFTON R. JESSUP, JR.
DAVID A. GARDELS
CHRISTIAN I. HALABI
JEDD S. PALMER
SHEILA A. PHILLIPS
MOLLY M. ROMERO
PATRICIA K. SCHUETT
STEVEN W. SELINE
JUDY A. WEILL
DENNIS B. WILSON

ROMAN L. HRUSKA
WILLIAM GORDINSKY
FRANK L. BURBRIDGE
GAIL E. BURBRIDGE
COUNSEL

ATLANTA

1200 STANDARD FEDERAL
SEEDS BUILDING
ATLANTA, GEORGIA 30303
(404) 522-8700

DENVER

1330 COLORADO NATIONAL BUILDING
DENVER, COLORADO 80202
(303) 534-1330

MINNESOTA

4844 IDS TOWER
MINNEAPOLIS, MINNESOTA 55402
(612) 338-1460

WASHINGTON

1101 CONNECTICUT AVENUE, N. W.
WASHINGTON, D. C. 20036
(202) 828-2400

Mr. Gordon A. Cain
President
The Alpetco Company
c/o Alaska Petrochemical
Company
Suite 806
3700 Buffalo Speedway
Houston, Texas 77098

Re: The Proposed Tax-Exempt Financing
for the Alpetco Refinery

Dear Mr. Cain:

We have been asked to comment on the use of tax-exempt bond proceeds to finance a portion of the construction costs of Alpetco's proposed refinery and related facilities at Valdez, Alaska.

In a tax-exempt financing such as the one under consideration, bond proceeds are available to pay construction costs, which eliminates the need for interim bank financing during the construction period. The indenture pursuant to which the bonds are issued will permit the periodic takedown of bond proceeds to pay construction costs as they are incurred.

Mr. Gordon A. Cain
December 11, 1979
Page Two

In the current economic climate, the use of bond proceeds to pay construction costs as they are incurred is preferable to an interim financing of such costs with a bank loan followed by a long-term tax-exempt bond financing. The prime rate for conventional corporate borrowings is now 15 1/4% while the interest rate on long-term tax-exempt bond issues similar to the one proposed by Alpetco is in the range of 8 1/2%.

Moreover, federal tax law permits unexpended moneys in the construction fund established with tax-exempt bond proceeds to be invested in taxable obligations at whatever yield is obtainable in the market.

Federal tax law does impose limitations on the earnings which may be legally derived from investment of tax-exempt bond proceeds. Those limitations are, however, subject to a number of exceptions. One exception relates to temporary periods during which bond proceeds are held pending their use in a construction project. If certain tests relating to the availability of a temporary period are met, bond proceeds can be invested during the period without limitation as to permissible earnings.

The maximum temporary period is generally three years, but may be as long as five years if an independent engineer certifies that a period longer than three years is necessary for construction and explains the reasons for it.

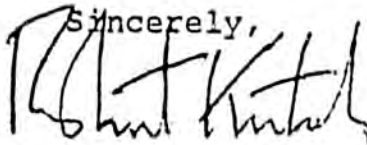
The requirements for the availability of a temporary period are that there be a binding obligation incurred within six months after the issuance of the bonds to expend at least \$100,000 on the project, that at least 85% of the proceeds of the bond issue be reasonably expected to be expended during the temporary period, and that the project proceed with due diligence to completion.

Not only is there no limitation on the amount by which the yield on a temporary period investment may exceed the yield on the bonds, there is also no limitation on the duration of an investment maturing during the temporary period

Mr. Gordon A. Cain
December 11, 1979
Page Three

other than the availability of funds to pay for construction as it progresses under the due diligence requirement. Assume, for example, a \$600 million bond issue for a four year construction period, with \$100 million to be expended in the first year, \$125 million in the second year, \$150 million in the third year and \$225 million in the fourth year. If the investment of the \$225 million to be expended in the fourth year will produce a higher yield through investment in securities with a term of three years rather than through investment in shorter term securities, such an investment may be made.

The use of bond proceeds to pay construction costs, which avoids the need for interim construction financing, is a conventional technique in tax-exempt financings. From the foregoing discussion, it is apparent that the present yield curve and the permissibility of unrestricted investment earnings during the construction temporary period make such use desirable for the Alpetco project.

Sincerely,


Robert J. Kutak

ljm

Exhibit 1

THE ALPETCO COMPANY
Pro Forma Funds Flow Statement
(\$Millions)

December 12, 1979

Sources	1977 to 3rd	1979	1980				1981				1982				Total
	Qtr, 1979	4th Qtr.	1st	2nd	3rd	4th	1st	2nd	3rd	4th	1st	2nd	3rd	4th	
Equity:															
Charter Oil (Alaska), Inc.	-0-	5.0	6.0	60.2	13.5	-0-	12.1	13.4	14.6	13.0	14.5	13.2	6.4	73.4	244.2
Alaska Petrochemical Company	7.0	-0-	-0-	17.0	4.5	-0-	4.0	4.5	4.9	4.4	4.8	14.4	2.2	24.5	81.5
E.P. Hutton (Alaska), Inc.	-0-	-0-	-0-	4.8	1.3	-0-	1.2	1.2	1.4	1.2	1.4	1.2	.6	6.9	23.0
Total Equity	7.0	5.0	6.0	82.0	19.3	-0-	17.3	19.1	20.9	18.6	20.7	18.8	9.2	104.8	348.7
Debt:															
Supplier Credits-Takedown ⁽¹⁾	-0-	-0-	-0-	-0-	-0-	-0-	43.5	78.1	86.1	87.6	88.8	92.5	88.6	170.5	735.7
Tax Exempt Bonds-Use ⁽²⁾	-0-	-0-	-0-	-0-	-0-	-0-	68.2	75.4	76.9	78.6	92.0	89.0	92.8	-0-	572.9
Interim Financing-Takedown ⁽³⁾	-0-	-0-	-0-	-0-	-0-	43.5	78.1	86.1	87.6	88.8	92.5	88.6	84.0	-0-	--
Interim Financing-Payback	-0-	-0-	-0-	-0-	-0-	-0-	(43.5)	(78.1)	(86.1)	(87.6)	(88.8)	(92.5)	(88.6)	(84.0)	--
Total Debt	-0-	-0-	-0-	-0-	-0-	43.5	146.3	161.5	164.5	167.4	184.6	177.5	176.8	86.5	1308.6
Total Sources	7.0	5.0	6.0	82.0	19.3	43.5	161.6	180.6	185.4	186.0	205.3	196.3	186.0	191.3	1657.3
Uses															
Development Cost	7.0	5.0	6.0	7.0	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	25.0
Construction Cost	-0-	-0-	-0-	75.0	18.3	39.1	154.4	168.2	171.1	166.1	177.8	163.8	149.1	149.1	1432.0
Interest Expense	-0-	-0-	-0-	-0-	-0-	2.6	3.5	6.0	7.5	12.1	13.5	18.0	21.9	26.3	111.4
Taxes & Insurance	-0-	-0-	-0-	-0-	1.0	1.0	2.0	2.7	3.1	4.0	4.5	5.0	5.5	6.5	35.4
Training & Misc.	-0-	-0-	-0-	-0-	-0-	.8	3.7	3.7	3.7	3.8	9.5	9.5	9.5	9.4	53.6
Total Uses	7.0	5.0	6.0	82.0	19.3	43.5	163.6	180.6	185.4	186.0	205.3	196.3	186.0	191.3	1657.3
Cumulative Totals	7.0	12.0	18.0	100.0	119.3	162.3	326.4	507.0	692.4	878.4	1083.7	1280.0	1466.0	1657.3	

(1) Takedown of supplier credits occurs on the first day of each quarter according to the amounts expended during the preceding quarter.

(2) Tax-exempt bonds are syndicated prior to December 10, 1980 and sold and drawn down in three equal amounts of \$191.0 million each beginning January 1, 1981.

(3) Interim construction financing is used to bridge the takedown of supplier credits.

Exhibit 2

December 12, 1979

THE ALPETCO COMPANY
Pro Forma Funds Flow Statement
(\$Millions)

Sources	1977 to 3rd	1979	1980				1981				1982				Total
	Qtr, 1979	4th Qtr.	1st	2nd	3rd	4th	1st	2nd	3rd	4th	1st	2nd	3rd	4th	
Equity:															
Charter Oil (Alaska), Inc.	-0-	5.0	6.0	60.2	13.5	30.5	47.7	30.3	27.0	25.2	-0-	-0-	-0-	-0-	244.2
Alaska Petrochemical Company	7.0	-0-	-0-	17.0	4.5	10.2	15.9	10.1	9.0	8.4	-0-	-0-	-0-	-0-	91.5
E.F. Hutton (Alaska), Inc.	-0-	-0-	-0-	4.8	1.3	2.8	4.5	2.9	2.6	2.4	-0-	-0-	-0-	-0-	23.0
Total Equity	7.0	5.0	6.0	82.0	19.3	43.5	68.1	43.3	38.6	36.0	-0-	-0-	-0-	-0-	348.7
Debt:															
Supplier Credit-Takedown (1)	-0-	-0-	-0-	-0-	-0-	-0-	43.5	78.1	86.1	87.6	88.8	92.5	88.6	170.5	735.7
Tax Exempt Bonds-Use (2)	-0-	-0-	-0-	-0-	-0-	-0-	68.2	75.4	76.9	78.6	92.0	89.0	92.8	-0-	572.5
Interim Financing-Takedown (3)	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-
Interim Financing-Payback	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-
Total Debt	-0-	-0-	-0-	-0-	-0-	-0-	111.7	153.5	163.0	166.2	180.8	181.5	181.4	170.5	1308.6
Total Sources	7.0	5.0	6.0	82.0	19.3	43.5	179.8	196.8	201.6	202.2	180.1	181.5	181.4	170.5	1657.3
Uses															
Development Cost	7.0	5.0	6.0	7.0	-0-	41.7	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	25.0
Construction Cost	-0-	-0-	-0-	75.0	18.3	-0-	154.4	168.2	171.1	166.1	177.8	163.8	149.1	149.1	1432.0
Interest Expense	-0-	-0-	-0-	-0-	-0-	-0-	3.5	6.0	7.5	12.1	13.5	18.0	21.9	26.3	111.4
Taxes & Insurance	-0-	-0-	-0-	-0-	1.0	1.0	2.0	2.7	3.1	4.0	4.5	5.0	5.5	6.5	35.4
Training & Misc.	-0-	-0-	-0-	-0-	-0-	.8	3.7	3.7	3.7	3.8	9.5	9.5	9.5	9.4	53.6
Investment Account	-0-	-0-	-0-	-0-	-0-	-0-	16.2	16.2	16.2	16.2	(24.5)	(14.8)	(4.6)	(20.9)	-0-
Total Uses	7.0	5.0	6.0	82.0	19.3	43.5	179.8	196.8	201.6	202.2	180.8	181.5	181.4	170.5	1657.3
Cumulative Totals	7.0	12.0	18.0	160.0	119.3	162.3	342.1	538.9	740.5	942.7	1123.5	1305.0	1486.4	1657.3	

(1) Takedown of supplier credits occurs on the first day of each quarter according to the amounts expended during the preceding quarter.

(2) Tax-exempt bonds are syndicated prior to December 18, 1980 and sold and drawn down in three equal amounts of \$191.0 million each beginning January 1, 1980.

(3) Interim construction financing is provided by early equity contributions as needed.

Article 10.2(3)(f)

"Complete and file an Environmental Impact Assessment on the petrochemical facility."

As stated in Commissioner LeResche's letter to Gordon Cain dated September 27, 1979 (enclosed herein under tab 10.2(3)(g):

"Based upon the Notice of Intent, we conclude that Alpetco has complied with Section 10.2(3)(f) of the 'Agreement for the Sale and Purchase of State Royalty Oil' approved by Legislative Resolve No. 42 (CONTRACT)."

We submitted a letter to the Commissioner and Mr. Tom Cook, Director of Division of Minerals and Energy Management on November 19, 1979 stating that we believed the Commissioner's September 27 letter verified compliance with this benchmark requirement.

Although not required by any benchmarks, we are pleased to note that the Alpetco Environment Impact Statement has been completed and a copy was submitted to the Commissioner on December 5, 1979 and further that notice of the EIS was published in the Federal Register on December 7, 1979.

Article 10.2(3)(g)

"Complete and file all material state, local and Federal permit applications."

As stated in Commissioner LeResche's letter to Gordon Cain dated September 27, 1979 (enclosed under this tab):

"Further we find that if Alpetco files all of the applications for permits as indicated in Attachment #1 by December 18, 1979, Alpetco will have complied with Section 10.2(3)(g) of the CONTRACT."

We submitted a letter to the Commissioner and Mr. Tom Cook, Director of Division of Minerals and Energy Management on November 19, 1979 which contained copies of all the permits filed by Alpetco pursuant to the list of permits included in Attachment #1 to the Commissioner's September 27, 1979 letter. In addition, we submitted the name of a contact at each governmental agency which could verify that the permits have been timely filed.

Having filed all permits as indicated by the Commissioner, we believe we have complied with this benchmark requirement.

ALASKA PETROCHEMICAL COMPANY

601 WEST 5TH AVENUE

ANCHORAGE, ALASKA 99501

TELEPHONE 907 272-1517 TELEX 090-25157

November 19, 1979

Mr. Robert E. LeResche, Commissioner
State of Alaska
Department of Natural Resources
Pouch M
Juneau, Alaska 99811

Mr. Tom Cook, Director
Division of Minerals and Energy Management
Department of Natural Resources
State of Alaska
703 W. Northern Lights Blvd.
Anchorage, Alaska 99503

Gentlemen:

This letter is submitted in response to Tom Cook's letter to me of October 21, 1979 and pursuant to Section 10.2 (3) (f) and (g) of the " Agreement for the Sale and Purchase of State Royalty Oil between Alaska Petrochemical Company and the State of Alaska, dated February 22, 1978" (The Agreement).

Section 10.2 (3)(f)

Enclosed (#1) is a copy of Commissioner LeResche's letter of September 27, 1979 to Gordon Cain concerning Section 10.2 (3)(f) of the Agreement. As stated in the September 27 letter, Alpetco's previous submittals and a review by the Commissioner of the Department of Environmental Conservation, an attorney designated by the Attorney General, and the permit coordinator have established that Alpetco has complied with Section 10.2 (3)(f) of The Agreement.

In addition, the United States Environmental Protection Agency's (EPA) "Notice of Availability" for a Draft Environmental Impact Statement will be announced in the Federal Register on Friday, December 7, 1979.

Section 10.2 (3)(g)

Attached to Commissioner LeResche's letter of September 27, 1979 to Gordon Cain was a list of all material state, federal, and local permit applications required to be filed by December 18,

1979 under Section 10.2 (3)(g). Enclosed (#2) with this letter are the cover or transmittal letters for each of the required permit applications or the appropriate state or federal agency's waiver or determination of inapplicability.

Verification of the filing for each of the applications required by Commissioner LeResche may be obtained from the appropriate agency. For your convenience, a list providing the name, mailing address, and telephone number of a contact person for each agency is enclosed (#3).

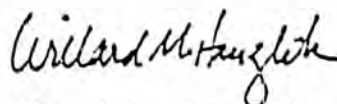
A separate transmittal is being made this date to Mr. Ed Park of the Division of Minerals and Energy Management. This transmittal includes a copy of this letter with enclosures and copies of all the permit applications required under Section 10.2 (3)(g). Copies of each of these permit application have been previously provided to Commissioner LeResche's office in Juneau.

If you have any further questions regarding Alpetco's performance under Section 10.2 (3)(f) and (g) of the Agreement, please direct them to:

Ronald R. Dagon, Manager
Environmental Programs and Permitting
ALASKA PETROCHEMICAL COMPANY
601 West 5th, Suite 320
Anchorage, Alaska 99501
(907) 272-1517

Sincerely yours,

ALASKA PETROCHEMICAL COMPANY



Willard M. Hanzlik
Vice-President

Enclosures: 3

cc: Mr. Ed Park (DMEM)
Ronald R. Dagon (Alpetco-Anchorage)

ENCLOSURE #1

Commissioner Robert E. LeResche letter to
Gordon A. Cain dated September 27, 1979
with Attachment #1

ATTACHMENT #1

PERMIT APPLICATIONS REQUIRED BY SECTION 10.2(3)(g) OF THE
AGREEMENT FOR THE SALE AND PURCHASE OF STATE
ROYALTY OIL APPROVED BY LEGISLATIVE RESOLVE NO. 42

STATE PERMITS

Department of Environmental Conservation Air Quality Control
Permit to Operate.

Department of Environmental Conservation Discharge Into
Navigable Waters Certificate of Reasonable Assurance.

Department of Environmental Conservation Solid Waste Disposal Permit.

Department of Environmental Conservation Waste Water Disposal Permit
[required only if this permit is not waived pursuant to
A.S. 46.03.110(e)].

Department of Natural Resources Pipeline Right-of-Way Permit.

Department of Natural Resources Tidelands Permit [required only if
Alpetco will secure tidelands for the construction dock from
the State].

Department of Natural Resources Water Use Permit.

FEDERAL PERMITS

U.S. Army Corps of Engineers' Structures Permit.

U.S. Department of Transportation Coast Guard Bridge Permit
[required only if the Coast Guard determines that waters to be
bridged are navigable; Alpetco is required to obtain the
Coast Guard's determination].

U.S. Environmental Protection Agency National Pollutant Discharge
Elimination System Permit.

STATE OF ALASKA

OCT 15 1979

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

OCT 22 1979

OFFICE OF THE COMMISSIONER

POUCH M - JUNEAU 95811

September 27, 1979

Mr. Gordon A. Cain
President
Alaska Petrochemical Company
3700 Buffalo Speedway
Suite 806
Houston, Texas 77098

Dear Mr. Cain:

On December 7, 1978, Region X of the U.S. Environmental Protection Agency (EPA) issued a Notice of Intent concerning the petrochemical facility to be constructed near Valdez, Alaska by Alaska Petrochemical Company (ALPETCO). The Notice of Intent sets forth EPA's conclusions based upon an initial assessment of the project. EPA has concluded that the proposed facility is a new source and that the issuance of a NPDES permit for the facility would be a major federal action requiring the preparation of an Environmental Impact Statement (EIS). ALPETCO has entered a Memorandum of Understanding with EPA which provides for the preparation of the EIS. It is my understanding that ALPETCO is currently intending to file for the federal, state, and local permits indicated in Attachment #1 to this letter by December 18, 1979.

The Notice of Intent and Attachment #1 have been reviewed by the Commissioner of the Department of Environmental Conservation, an attorney designated by the Attorney General, and the permit coordinator. Based upon the Notice of Intent, we conclude that ALPETCO has complied with Section 10.2(3)(f) of the "Agreement for the Sale and Purchase of State Royalty Oil" approved by Legislative Resolve No. 42 (CONTRACT).

Mr. Gordon A. Cain

-2-

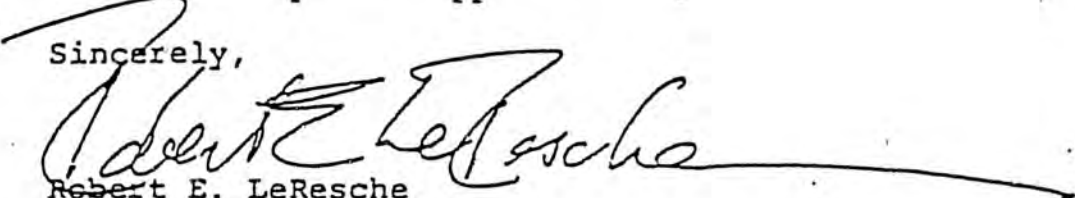
September 27, 1979

Further, we find that if ALPETCO files all of the applications for permits as indicated in Attachment #1 by December 18, 1979, ALPETCO will have complied with Section 10.2(3)(g) of the CONTRACT. For convenient reference the pertinent sections of the CONTRACT are quoted below:

(f) Complete and file an Environmental Impact Assessment on the Petrochemical Facility.

(g) Complete and file all material state, local and federal permit applications.

Sincerely,



Robert E. LeResche
Commissioner

Attachment

List No. 1 - Federal Permits (Continued)

U.S. Environmental Protection Agency Permit for Treatment, Storage or Disposal of Hazardous Wastes [not required until such time as an application may be made pursuant to regulations promulgated by EPA pursuant to 42 U.S.C., §6925 and which are effective pursuant to 42 U.S.C., §6930(b)].

U.S. Environmental Protection Agency Prevention of Significant Deterioration Permit.

LOCAL PERMITS

Ground Lease from City of Valdez.

Tidelands Lease from the City [required only if Alpetco will secure tidelands for the construction dock from the City].

Enclosure #2

Cover or transmittal letters for each
required permit application or the
waiver or determination of inapplicability.

PERMIT APPLICATIONS REQUIRED BY SECTION 10.2(3)(g) OF THE
AGREEMENT FOR THE SALE AND PURCHASE OF STATE
ROYALTY OIL APPROVED BY LEGISLATIVE RESOLVE NO. 42

Date permit
filed and/or
waiver or
determination
received

STATE PERMITS

Department of Environmental Conservation Air Quality Control
Permit to Operate.

10/30/79

Department of Environmental Conservation Discharge Into
Navigable Waters Certificate of Reasonable Assurance.

10/30/79

Department of Environmental Conservation Solid Waste Disposal Permit.

10/16/79

Department of Environmental Conservation Waste Water Disposal Permit
[required only if this permit is not waived pursuant to
A.S. 46.03.110(e)].

11/1/79

Department of Natural Resources Pipeline Right-of-Way Permit.

9/26/79

Department of Natural Resources Tidelands Permit [required only if
Alpetco will secure tidelands for the construction dock from
the State].

NA

Department of Natural Resources Water Use Permit.

9/26/79

FEDERAL PERMITS

U.S. Army Corps of Engineers' Structures Permit.

9/20/79 and
9/21/79

U.S. Department of Transportation Coast Guard Bridge Permit
[required only if the Coast Guard determines that waters to be
bridged are navigable; Alpetco is required to obtain the
Coast Guard's determination].

10/31/79

U.S. Environmental Protection Agency/ National Pollutant Discharge
Elimination System Permit.

9/19/79
(update)

List No. 1 - Federal Permits (Continued)

U.S. Environmental Protection Agency Permit for Treatment, Storage or Disposal of Hazardous Wastes [not required until such time as an application may be made pursuant to regulations promulgated by EPA pursuant to 42 U.S.C., §6925 and which are effective pursuant to 42 U.S.C., §6930(b)].

11/1/79

U.S. Environmental Protection Agency Prevention of Significant Deterioration Permit.

10/8/79

LOCAL PERMITS

Ground Lease from City of Valdez.

10/11/79 and
10/30/79

Tidelands Lease from the City [required only if Alpetco will secure tidelands for the construction dock from the City].

10/11/79

Article 10.2(3)(h)

"Complete plant design and optimization necessary to obtain a definitive project cost estimate ('definitive' meaning a cost estimate containing no more than fifteen percent (15%) variance in anticipated costs)."

In support of compliance with this benchmark, attached is a letter from Gordon Cain describing in general the work completed for plant design and optimization and reports discussing in more detail Plant Design and Optimization Studies. We are also submitting separately today eleven (11) bound volumes of engineering design, optimization studies and reports prepared for Alpetco by its engineers and process licensors and consultants. An index of these volumes follows Mr. Cain's letter. Two of the volumes, "Exxon Technology" and "Sulfur Recovery Facilities" are subject to secrecy agreements between Alpetco and the respective engineering companies and therefore are submitted with a request for confidential treatment.

This work has been underway for over eighteen months and represents design and optimization necessary to obtain a definitive project cost estimate.

Five of the volumes referred to above were prepared by The Lummus Company, former Managing Contractor for Alaska Petrochemical Company. In November, 1979, the partners of The Alpetco Company named C. F. Braun Company as Managing Engineers and Contractors for the petrochemical facility. C. F. Braun will assume the responsibilities previously assigned to Lummus.

We understand that The Pace Company, Houston, Texas has been retained by the Department of Natural Resources to review Alpetco's plant design and optimization and that the State's consultants will submit a report to the Commissioner by December 14, 1979 regarding Alpetco's compliance with this benchmark.

We believe that Alpetco is in full compliance with this benchmark requirement.

ALASKA PETROCHEMICAL COMPANY

3700 BUFFALO SPEEDWAY
HOUSTON, TEXAS 77098
TELEPHONE 713 840-1343 TELEX 791461

December 3, 1979

Dr. Robert E. LeResche, Commissioner
Department of Natural Resources
State of Alaska
Pouch "M"
Juneau, Alaska 99811

Dear Commissioner LeResche:

Following is a summary of information which has been prepared as required by Article 10.2(3)(h) of The Agreement for the Sale and Purchase of State Royalty Oil between Alaska Petrochemical Company and the State of Alaska dated February 22, 1978. A brief memorandum covering the work which has been done on plant design and process optimization is attached. More detailed information is available in each of these areas and can be made available for your review at your request. We are submitting to you today under separate cover copies of detailed engineering studies prepared for us by UOP Process Division, C-E Lummus Company, R. M. Parsons Company, Heat Research Corporation and Exxon Research and Engineering Company. An index of these materials is attached to this letter.

1. Plant Design

Preliminary studies of required facilities were prepared by Chem Systems, Inc. and Brown & Root. After approval of The Agreement on June 18, 1978, Chem Systems began more definitive studies with the assistance of Brown & Root personnel. Late in 1978, UOP Process Division was retained to carry out additional plant design studies based on their basic technology supplemented by special technology from Exxon Research and Engineering Co., R. M. Parsons Company, and Heat Research Corp. (a subsidiary of M. W. Kellogg, Inc.) These studies resulted in a processing plan to produce fuel products such as unleaded gasoline and jet fuel and chemical products such as benzene, toluene, and xylene. Using projected product demands and prices, the optimum plant design for the first phase of construction would produce fuel products, petrochemicals and petrochemical feedstocks that could be used in subsequent construction phases.

December 3, 1979

The products to be produced in the first phase are outlined in the report which has been submitted covering Article 10.2(3)(b) on product requirements, production ratios and quantities.

2. Optimization Studies

After completion of the preliminary plant design, studies were undertaken to further optimize the design. These studies were carried out by UOP and Alpetco personnel, using marketing data developed specifically for the West Coast and Pacific basin market area. Various computer studies were carried out to determine the economics of each unit which had been included in the plant design and the economics of various production levels of products. After extensive analysis, it was concluded that the original plant design should be retained with only minor revisions.

The optimized plant design includes four major units to produce such fuels as unleaded gasoline and jet fuel and petrochemicals such as benzene, toluene and xylene. In addition, olefins such as propylene and ethylene and such petrochemical feedstocks as paraffinic naphtha are available which could be converted into additional petrochemicals in subsequent phases of plant construction.

In addition to the plant design and optimization work which has been outlined above, additional process engineering has been carried forward. This work has covered the onsite and off-site facilities and has been done by the following organizations:

Exxon Research & Engineering Co.	-	Flexicoking
R. M. Parsons Company	-	Sulfur Recovery
Heat Research Corporation	-	Hydrogen Plant
UOP Process Division	-	All other plants including catalytic reforming, catalytic cracking and mild hydrocracking
C-E Lummus Company	-	All offsite facilities such as tankage, waste treatment, power plant, etc.
Santa Fe Engineering Co.	-	Product Dock

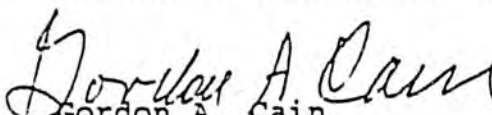
December 3, 1979

This engineering work has recently been completed and will serve as the basis for a project cost estimate.

We believe that the work which has been summarized above satisfies Article 10.2(3)(h) of The Agreement. We will be glad to discuss any aspect of this work if you so desire.

Very truly yours,

ALASKA PETROCHEMICAL COMPANY


Gordon A. Cain
President

GAC:br

w/attachment

List of Detailed Engineering Studies

INDEX

1. Alaska Petrochemical Company, Valdez Refinery and Petrochemical Project, UOP Process Division
 - Volume 1 - Process Selection
 - Volume 2 - Process Optimization
2. Engineering for Cost Estimating, Alaska Petrochemical Refinery at Valdez, Alaska; UOP Process Division.
3. The Alpetco Company Oil Refining and Petrochemical Facility at Valdez, Alaska; Project Definition, C-E Lummus Company
 - Section I
 - Volumes 1 and 2 - Project Definition, General
 - Section II
 - Volume 1 - Project Definition, Onsite (ISBL) Facilities
 - Section III
 - Volumes 1 and 2 - Project Definition, Offsite (OSBL) Facilities
4. Sulfur Recovery Facilities, Proposal; The Ralph M. Parsons Company.
5. Process Specification - 40 MMSCF/D Hydrogen Plant; Heat Research Corporation.
6. Exxon Technology (Flexicoking Unit); Exxon Research and Engineering Company.

THE ALPETCO COMPANY
Refinery & Petrochemical Plant
Valdez, Alaska

PLANT DESIGN

Preliminary Studies:

Some of the preliminary studies for definition of the plant facilities for the project were carried out by Chem Systems, Inc. and Brown & Root. These studies visualized a major refining facility producing fuels with extensive petrochemical plants for processing available petrochemical raw materials into finished petrochemicals. These studies were developed to the point where a proposal could be prepared for submission to the State of Alaska. Preliminary cost estimates and preliminary economic analyses were made. These indicated that a very major facility would be required to provide refining capability and production facilities for large quantities of petrochemicals to be produced from the ethylene and benzene which were available raw materials.

More Definitive Planning Studies:

After the approval of the Royalty Oil Contract in June, 1978, additional studies were undertaken by Chem Systems and Brown & Root. For these studies the Chem Systems personnel carried out extensive computer simulations using data on individual process units which they obtained from process licensors. Brown & Root personnel developed cost estimates for each of these processing studies so that economic analyses

could be completed. Many of these studies were devoted to the definition of the optimum combination of refining capacity and petrochemical production capacity.

The general decline in the petrochemical market during 1978 and early 1979 and the significant upswing in the fuel products marketing picture prompted concentration on the facilities to produce fuel products and some petrochemicals with the production of additional petrochemicals deferred to a later phase. Because of their strong market position, primary petrochemical emphasis was placed on the production of benzene, toluene and xylene which are important building blocks for further petrochemical operations.

Late in 1978 the studies were carried into a second phase when the Process Division of UOP was retained to carry forward more extensive computer studies using their technology and technology which had been developed by other companies. Other technology selected for further study included the Flexicoking process by Exxon Research & Engineering for the conversion of the heavy fraction of the crude. The combination of this process technology with the capability to produce hydrogen and recover sulfur resulted in a complete plant which can produce a large quantity of high quality fuel products and substantial amounts of aromatic chemicals. Various alternative process combinations were studied, all directed toward the production of a product slate with the highest possible economic return which could be built in the severe Alaskan environment.

This processing scheme consisted of the basic refining processes provided by UOP including catalytic cracking, catalytic reforming and very mild hydrocracking. In addition, the Flexicoking technology from Exxon Research & Engineering was included in order to deal with the heavy fraction from crude. The combination of these produced an attractive return and was presented in the product slate and process flow plan descriptions which were prepared for presentation to possible participants in the project.

The process plan which was ultimately developed included the following key processing steps designed primarily to provide the most economical plant configuration.

Catalytic Reforming:

This process produces benzene, toluene and xylene, which can be extracted for sale as petrochemicals. It also produces high octane material for the production of gasoline. After the extraction of the aromatics, the remaining material is a very high quality paraffinic naphtha which can be used as a steam cracking feedstock to produce ethylene.

Mild Hydrocracking:

This process converts gas oil into high quality jet fuel. In the process, a large quantity of isobutane is produced which is required for olefin processing.

Catalytic Cracking:

This process converts gas oil into gasoline components with a large production of olefins. At the present time these olefins are to be converted into high octane blend stocks for gasoline, but could ultimately be recovered for the production of additional petrochemicals.

Flexicoking:

This process breaks up the heavy fraction of crude, normally sold as heavy fuel oil, and converts it into light products which can be fed to the other processing steps to produce additional fuel products and petrochemicals. By the use of this technology, a low BTU gas stream is produced which can be used to provide a substantial amount of the energy required for plant operation. The combination of this process

with the other conversion processes makes it possible to produce a large volume of high quality fuel products and petrochemicals from North Slope crude.

Offsite Design:

After the designs for the onsite part of the plant had been put together, the C-E Lummus Company prepared preliminary designs for the offsite facilities. These consist of tanks, docks, pipelines, blending facilities, power facilities, utility systems, and other support facilities required to provide an operable plant. During the design of these facilities, a plant layout was developed showing the location of each piece of equipment.

THE ALPETCO COMPANY
Refinery & Petrochemical Plant
Valdez, Alaska

OPTIMIZATION STUDIES

Upon completion of the work to preliminarily define the process plan, a major study was undertaken by the Process Division of UOP to optimize the design in preparation for more definitive process design. In order to carry out these studies the marketing situation was reassessed along with the pricing basis for products in 1984 and thereafter. In addition to this, the technology which had been considered for processing the heavy fraction of the crude was also reassessed. A detailed program was then developed for a series of computer runs to define the optimum process plan for the plant at Valdez.

The various computer runs, which have been summarized by UOP indicate that the original process configuration was very close to the optimum. Various size units have been considered in the main processing sequence in order to assure that the optimum design is carried forward into the next phase of the project. The specific areas which have been considered and the general conclusions which have been reached regarding them are as follows:

a. Mild Hydrocracking

The mild hydrocracking operation is a desirable process for upgrading light gas oil into jet fuel. Because of the large demands of the jet fuel market and the economic attractiveness of this fuel, a large hydrocracking unit is being included in the process

plan. The size of the unit has been determined by the volume of light gas oil which is available and the pressure level of the unit has been limited by the severity required to produce high quality jet fuel. Any further modifications to include heavier feed result in a larger unit, operating at a higher pressure level and requiring additional hydrogen production. After consideration of the various operating factors involved, it has been concluded that the low pressure unit feeding light gas oil should be included in the process design in the first phase of plant construction.

Additional aromatics production could be obtained by construction of a high pressure hydrocracking unit to produce naphtha from heavy gas oil as a second phase of plant construction.

b. Catalytic Cracking

The catalytic cracking unit has been revised to remove any recycle material from the feed. For satisfactory cracking of this recycle material, which is highly aromatic, a major investment would have to be made in hydrotreating and hydrogen production facilities to improve the quality of this stream. After a thorough economic evaluation it has been concluded that the catalytic cracking unit should be designed for once through conversion and that no treating of the cycle stock should be included in the design at this time. This is the only significant change from the original process plan.

c. Flexicoking

After a thorough evaluation of all bottoms processing schemes the Flexicoking technology provide the best combination of high liquid yields and minimum coke disposal. Other processing techniques make it necessary to produce a low value fuel oil. Further

steps have been taken to improve the design of the sulfur handling facilities for cleaning up the low BTU gas. It has been concluded that these facilities are sound and can be satisfactorily included in the design.

d. Catalytic Reforming

The catalytic reformer, which is a continuous reforming process of the latest design from UOP, will be increased in size so that in the event large quantities of virgin naphtha are available for production of gasoline, adequate reforming capacity will also be available. This naphtha can be produced by high severity hydrocracking of light gas oil.

Marginal Processing Steps:

In addition to an overall optimization of the plant, studies have been conducted on each of the peripheral processing plants in order to determine whether or not they should be included in the processing scheme. These peripheral plants are the Sulfolane extraction facilities for production of aromatics and the facilities for processing light olefins by polymerization or alkylation.

In the case of Sulfolane extraction of aromatics, it has been concluded that aromatics recovery is highly attractive provided that the raffinate can be disposed of at an attractive price based primarily on its value in gasoline. These facilities will produce a large quantity of aromatic petrochemicals which are very much in demand. The low octane byproduct raffinate is a very desirable steam cracking feedstock, or it can be used as a component for gasoline blending.

The alkylation facilities for handling mixed butylenes and propylenes to make alkylate for gasoline blending and the polymerization facilities for handling propylene will be sized

to optimize the processing of these olefins. These olefin streams could be used as petrochemical feedstocks for the next phase of plant construction. For the first phase these olefinic hydrocarbons will be converted to gasoline blending components.

We
think
we
can

PLEASE NOTE: THE PRECEDING PAGES WERE TREATED
AS A UNIT IN THE ORIGINAL DOCUMENT.

THE ALPETCO COMPANY

3700 BUFFALO SPEEDWAY

HOUSTON, TEXAS 77098

TELEPHONE 713 840-1243 TELEX 791461

December 17, 1979

Dr. Robert E. LeResche
Commissioner
Department of Natural Resources
State of Alaska
Pouch "M"
Juneau, Alaska 99811

Re: Article 10.2(3) of the Agreement for the Sale and Purchase of State
Royalty Oil between Alaska Petrochemical Company and the State of
Alaska dated February 22, 1979 (the "Agreement")

Dear Commissioner LeResche:

During our meeting last Thursday, December 13, in Seattle, you and your associates raised certain questions concerning the material submitted to you at that meeting and we are herewith conveying material which we believe will clarify the points raised, all of which had to do with paragraph 10.2(3)(d) and (e) of the Royalty Oil Contract.

These points were as follows:

1. Two questions were raised regarding Thyssen's financing contract: one was the suggestion that the language of paragraph 3 of Thyssen's December 7, 1979 commitment letter be clarified [10.2(3)(d)]. The other question was whether or not Thyssen would agree to provide a commitment for interim financing for the construction of the Facility [10.2(3)(e)].

Included herewith is Thyssen's telex which clarifies the language in question and which commits to provide interim construction financing, if and when needed.

2. A question was raised by Don Holman, Esq. of Preston, Thorgrimson, Ellis and Holman as to whether or not the City of Valdez could issue industrial revenue bonds in connection with Alpetco's financing without violating AS 37.10.085.

Enclosed herewith are two legal opinions, one dated December 13, 1979 from Wohlfarth and Flint (with enclosures), bond counsel for the City of Valdez, and an opinion dated December 14, 1979 from Kutak, Rock & Huie, bond counsel for EF Hutton & Company Inc.

3. A question was raised under paragraph 3 of the May 17, 1978 amendment to the Royalty Oil Agreement as to whether or not Alaska Interstate would be willing to commit for all of Alaska Petrochemical's share of the \$100 million commitment required under the amendment.

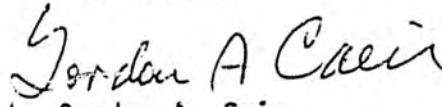
Dr. Robert E. LeResche
December 17, 1979
Page Two

Alaska Interstate Company's answer was affirmative and transmitted herewith is a letter dated December 14, 1979 whereby Alaska Interstate Company commits to fulfill all of Alaska Petrochemical Company's portion of the \$100 million commitment, if necessary.

4. Also transmitted herewith is Alaska Petrochemical Company's Progress Report No. 18 dated December 18, 1979.

The above material along with that transmitted to you at our December 5, 1979 meeting in Juneau and our December 13, 1979 meeting in Seattle, together with the testimony given at those meetings, in our opinion successfully complies with all of the December 18, 1979 "Benchmarks" on the Royalty Oil Agreement.

Sincerely,


Gordon A. Cain
President

GAC:t
Enclosures.

RCA DEC 17 1106+
ALPETCO HOU

8588561Z TRT D 17.12.79 FS NR. 45276 SCHWARZE/WK 17.10

ATTENTION: MR. CHARLES HONIG OR MR. GORDON CAIN

PLEASE FIND HEREIN BELOW OUR REVISED WORDING FOR
COMMITMENT LETTER:

GENTLEMEN:

IN CONSIDERATION OF ALPETCO ENTERING INTO THE
ATTACHED ENGINEERING- AND CONSTRUCTION-CONTRACT
WITH THYSSEN RHEINSTAHL TECHNIK GMBH (THYSSEN)
AND FOSTER WHEELER ENERGY CORPORATION FOR THE
ENGINEERING, SUPPLIES, AND CONSTRUCTION OF THE
FACILITIES OF ALPETCO'S VALDEZ, ALASKA REFINERY
AND PETROCHEMICAL FACILITY (PROJECT), SUCH PROJECT
HEADED BY THE ALPETCO COMPANY (ALPETCO) - A JOINT
VENTURE PARTNERSHIP OWNED BY CHARTER OIL (ALASKA),
INC., A SUBSIDIARY OF THE CHARTER COMPANY, ALASKA
PETROCHEMICAL COMPANY AND E.F. HUTTON (ALASKA) INC. -
WE HEREBY COMMIT TO ARRANGE FINANCING OF UP TO US-
DOLLAR 750,000 000,-- (SEVENHUNDREDANDFIFTY MILLION
US-DOLLARS) TO COVER COSTS FOR THE ENGINEERING,
EQUIPMENT, MATERIALS, CONSTRUCTION AND OTHER SERVICES
REQUIRED FOR THE PROJECT.

IN ADDITION TO ARRANGING THE ABOVE FINANCING, WE HEREBY
ALSO COMMIT TO ARRANGE INTERIM FINANCING FOR THE CON-
STRUCTION OF THE PROJECT OF UP TO US DOLLAR 150,000,000
(ONEHUNDREDANDFIFTY MILLION US-DOLLARS) IF AND AS
NEEDED, PROVIDED THE EXISTING BANK COMMITMENTS DO
NOT MATERIALIZE.

OUR COMMITMENTS HEREUNDER ARE SUBJECT TO THE FOLLOW-
ING:

*Rec'd 12-17-79
1025 am*

1. ALPETCO'S ACQUIRING AND CONTRIBUTING TO THE PROJECT FINANCING OF AT LEAST US DOLLAR 750,000,000, -- (SEVENHUNDREDANDFIFTY MILLION US-DOLLARS) BY A COMBINATION OF THE ISSUANCE OF INDUSTRIAL REVENUE BONDS, EQUITY INVESTMENT AND/OR SATISFACTORY FORMS OF FINANCING BY ALPETCO'S PARTNERS AS ARE REQUIRED FOR THE PROJECT IMPLEMENTATION,
AND
2. ALPETCO'S OBTAINING ALL NECESSARY APPROVALS AND PERMITS REQUIRED BY THE RESPONSIBLE AUTHORITIES FOR THE CONSTRUCTION AND OPERATION OF THE PROJECT, THE ROYALTY CRUDE OIL CONTRACT BEING IN EFFECT AND ALPETCO HAVING THE RIGHT TO TAKE CRUDE OIL NOT LATER THAN JULY 18, 1980,
AND
3. EXECUTION OF DEFINITIVE DOCUMENTS RELATING TO THE LONG-TERM FINANCING FOR THE PROJECT ON OR BEFORE DECEMBER 18, 1980.

IF THE ABOVE DEFINITIVE AGREEMENTS ARE NOT ENTERED INTO BY SUCH DATE, WE RESERVE THE RIGHT TO TERMINATE OUR COMMITMENT HEREUNDER WITHOUT ANY LIABILITY ON OUR PART.

THIS LETTER REPLACES OUR DECEMBER 7, 1979 LETTER TO YOU ON THE SAME SUBJECT, A COPY OF WHICH IS ATTACHED HERETO.

YOURS FAITHFULLY,
W. SCHWARZE / THYSSEN RHEINSTAHL TECHNIK GMBH

ALPETCO HOU

8588561Z TRT D



Thyssen Rheinstahl Technik GmbH · Postfach 80 23 · 4000 Düsseldorf 1

THYSSEN RHEINSTAHL TECHNIK GMBH

The Alpetco Company
3700 Buffalo Speedway
Houston, Texas 77098
U. S. A.

Thyssen Technik-Haus
Königsallee 106
Düsseldorf

Ihre Zeichen

Ihre Nachricht vom

Unsere Zeichen
Recht/Dr.W./ho

Unser Hausruf (Direktwahl)
(02 11) 38 03-

Düsseldorf
December 7, 1979

Betreff

Gentlemen:

In consideration of Alpetco entering into the attached Engineering- and Construction-Contract with Thyssen Rheinstahl Technik GmbH (Thyssen), or a Joint Venture consisting of Thyssen and another party nominated by Thyssen, for the engineering, supplies and construction of the facilities of Alpetco's Valdez, Alaska Refinery and Petrochemical Facility (Project), such Project headed by The Alpetco Company (Alpetco) - a Joint Venture partnership owned by Charter Oil (Alaska), Inc., a subsidiary of The Charter Company, Alaska Petrochemical Company and E.F. Hutton (Alaska), Inc. - we hereby commit to arrange financing of up to US\$ 750,000,000.-- (sevenhundredandfifty million US-Dollars) to cover cost for the engineering, equipment, materials, construction and other services required for the Project.

Our commitment hereunder is subject to Alpetco's acquiring and contributing to the Project financing of at least US\$ 750,000,000.- (sevenhundredandfifty million US-Dollars) by the issuance of industrial revenue bonds, equity investment and other satisfactory forms of financing by Alpetco's partners as are required for the Project implementation.

- 2 -

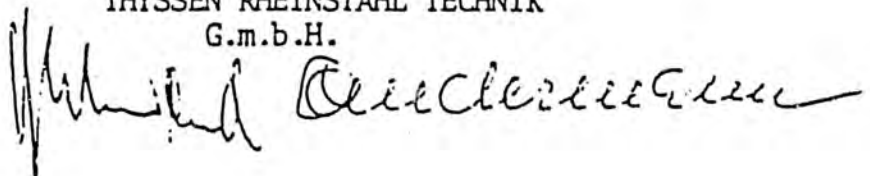
AGO 560057

Definitive agreements for all the financing required shall be entered into by December 18, 1980, on such terms and conditions as are customarily required for similar financings by lenders at such time. If such definitive agreements are not entered into by such date, we reserve the right to terminate our commitment hereunder without any liability on our part.

The financing shall be subject to Alpetco obtaining all necessary approvals and permits required by the responsible authorities for the construction and operation of the Project, the Royalty Crude Oil Contract being in effect and Alpetco having the right to take crude oil not later than July 18, 1980.

Yours faithfully,

THYSSEN RHEINSTAHL TECHNIK
G.m.b.H.



PLEASE NOTE: THE FOLLOWING PAGES WERE TREATED
AS A UNIT IN THE ORIGINAL DOCUMENT.

December 13, 1979

Mr. Mark Lewis, Manager
City of Valdez
P. O. Box 307
Valdez, Alaska 99686

Dear Mr. Lewis:

A question has apparently been raised as to whether the proposed industrial revenue bond financing by the City of Valdez for Alpetco violates AS 37.10.085 which prohibits either the state or political subdivision to lend its credit for the use of a private corporation or to borrow money for the use of a private corporation.

In our opinion, the answer to the above question is clearly no. We point out to you at the outset that the entire City of Valdez Marine Terminal Revenue Bond program was effectuated under the same provisions of the City Charter and in light of AS 37.10.085. This financing was accomplished after extensive legal research. The principal case cited in the legal research was Wright v. City of Palmer, 468 P.2d 326 (Alaska, 1970) where the court deals with the precise issue on page 328 and 329. The court there held that a general obligation bond issue of the City of Palmer to purchase an industrial plant site for a specific private corporation did not violate AS 37.10.085 and was consistent with specific provisions of the Alaska Constitution.

For the benefit of Don Holman, Esq. of Preston, Thorgrimson, Ellis & Holman who has apparently raised the question, we are enclosing a copy of our memorandum of law on this subject matter and a copy of the case of Wright v. City of Palmer.

If you have any other questions with respect to this matter, please do not hesitate to call on us. Because the matter is urgent, we are telecopying this opinion directly to you and will mail to Mr. Holman a copy with a copy of the above-referenced enclosures.

Very truly yours,

WOHLFORTH & FLINT

By
Eric E. Wohlforth

EEW/lw

cc: Don Holman, Esq.

AGO 560059

April 4, 1977

EXXON COMPANY, U.S.A.
P.O. Box 397
Valdez, Alaska 99681

Attention: PHILIP W. HARR, Esq.

Sirs:

You have asked our opinion as to the authority of the City of Valdez, Alaska, to issue Marine Terminal Revenue Bonds without specific state statutory authorization. It is our opinion that the City has this power as a home rule city of the State of Alaska. Further, in our view, this power was validly exercised consistent with the Alaska State Constitution by the City in the proceedings pursuant to which \$265,000,000 City of Valdez, Alaska, Marine Terminal Revenue Bonds (ARCO Pipe Line Company Project) Series 1977 were issued on February 15, 1977. We set forth our reasoning and legal analysis below.

Home Rule Question

Sections 1 through 8 of Article X of the Alaska Constitution establish the structure of local government in the State of Alaska. Sections 9, 10 and 11 of Article X of the Constitution provide the basis for home rule municipalities in the State of Alaska. Section 9 of Article X states:

"The qualified voters of any borough of the first class or city of the first class may adopt, amend, or repeal a home rule charter in a manner provided by law. In the absence of such legislation, the governing body of a borough or city of the first class shall provide the procedure for the preparation and adoption or rejection of the charter. All charters, or parts or amendments of charters, shall be submitted to the qualified voters of the borough or city, and shall become effective if approved by a majority of those who vote on the specific question."

Exxon Company, U.S.A.
April 4, 1977
Page Two

Section 10 of Article X states:

"The legislature may extend home rule to other boroughs and cities."

And Section 11 of Article X states:

"A home rule borough or city may exercise all legislative powers not prohibited by law or by charter."

These constitutional provisions are further expanded by statute. Section 29.08.010 of the Alaska Statutes Annotated provides that:

"A home rule municipality is a municipal corporation and political subdivision and is a borough of the first class or city of the first class which has adopted a home rule charter. It has all legislative powers not prohibited by law or by charter."

Article 1 of Chapter 13 of Title 29 provides for the adoption and amendment of charters for home rule municipalities. Article 2 of Chapter 13 of Title 29 places certain limitations on home rule municipalities.

We have, of course, concluded that the City of Valdez Charter was validly adopted and that its amendments have been validly adopted. We refer you specifically to the Charter Amendment adopted in connection with the issuance of Industrial Development Bonds attached hereto as Appendix A.

The Supreme Court of Alaska in Jefferson v. State, 527 P.2d 37 (Alaska 1974) set down the limits of home rule power of Alaska charter cities. In Jefferson v. State the court reviewed the earlier four cases analyzing the home rule provision of the State Constitution (Article X, §11) as well as the two Law Review articles which had analyzed and criticized the court's earlier opinions. In Jefferson v. State, the court held that Article X, §11, which states that:

Exxon Company, U.S.A.
April 4, 1977
Page Three

"A home rule borough or city may exercise all legislative powers not prohibited by law or charter."

meant what it says, namely that there must be a prohibition on the exercise of municipal power arising from the law or charter for a power to be denied to home rule municipalities.

At 527 P.2d, page 43, the court stated that:

"The test we derived from Alaska's Constitutional provisions is one of prohibition, rather than traditional tests such as state-wide versus local concern. A municipal ordinance is not necessarily invalid in Alaska because it is inconsistent or in conflict with the State statute. The question rests on whether the exercise of authority has been prohibited to municipalities. The prohibition must be either by express terms or by implication such as where the statute and ordinance are so substantially irreconcilable that one cannot be given its substantive effect if the other is to be accorded the weight of law."

The case is important because the court in earlier opinions, principally Chugach Electric Association v. City of Anchorage, 476 P.2d 115 (Alaska 1970) and Macauley v. Hildebrand, 491 P.2d 120 (Alaska 1971), had indicated its preference for the test of the so-called "local activities rule". As stated in the concurring opinion in Jefferson v. State, which advocated the adoption of the "local activities rule", this rule requires the court to focus upon whether the particular subject under consideration is of such statewide concern that the exercise of municipal power is inconsistent with the effectuation of statewide policy, as expressed by statute. The court's adherence to this test in the two other recent cases prior to Jefferson v. State had been extensively criticized in Sharp, Home Rule in Alaska: A Clash Between the Constitution and the Court, 3 UCLA-Alaska L.R. 1 (1973). The author of the Law Review article stated at page 53

Exxon Company, U.S.A.
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"In the ten years that followed statehood the court refrained from seeking guidance from other states in that interpretation of its home rule grant, and in the Lien, Maier and Rubey decisions displayed an understanding of the intent of the constitutional provision. These three decisions set a pattern of broad, constitutionally based home rule powers and of a liberal judicial construction of home rule powers. However, in Chugach, a case which followed a substantial change in court personnel, the court reversed both patterns. It adopted the state-local test, which it denominated the 'local activities rule', with the result that where any statewide interest is at stake a state statute which is inconsistent with an ordinance of a home rule municipality will constitute a prohibition."

In Jefferson v. State, however, the court stated that the framers of the Constitution

" . . . were aware of the difficulties encountered in other jurisdictions where delegations of power to local units were conferred in terms, such as 'matters of local concern' or of local affairs which were intended to create an exclusive sphere of municipal action free from any intrusion by the state legislature." (527 P.2d 37, 43)

The court stated that attempts by the courts of those jurisdictions to resolve conflicts had led to confusion and inconsistencies and, in view of this, that the constitutional delegates undertook to give Alaska home rule municipalities a wide range of powers to meet the differing needs of the widely scattered communities within the state. They hoped that the Article X, §11 grant of home rule authority would lead the courts to take a new approach to the subject of conflicts between municipalities and the state.

Exxon Company, U.S.A.
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Page Five

The court in Jefferson v. State returned to the legal rationale adopted in Rubey v. City of Fairbanks, 456 P.2d 470, 475 (Alaska 1969) stating it declined to follow California's pre-emption-by-state-occupation-of-the-field-doctrine because of the difference between California's and Alaska's home rule provisions. The court stated that the foundation for the "new approach" resolving conflicts between municipalities and the state had been laid in past decisions of the Alaska Supreme Court which favored the exercise of legislative powers by local government units. For the last statement, the court cited Lien v. City of Ketchikan, 383 P.2d 721-723 (Alaska 1963); City of Juneau v. Hixson, 373 P.2d 743 (Alaska 1962); Rubey v. City of Fairbanks, 456 P.2d 470-475 (Alaska 1969).

In Jefferson v. State the court clearly reverted to the rationale of the Rubey case citing it three times in rejecting the test of the "local activities rule". In stating that the "prohibition test" is the one upon the Alaska Supreme Court will decide cases it stated at footnote 33 as follows:

"We affirm our rejection of the doctrine of state pre-emption by 'occupying the field'. We will not read into a scheme of statutory provisions any intention to prohibit the exercise of home rule authority in the area of the law. If the legislature wishes to 'pre-empt' an entire field, they must so state. See Rubey v. City of Fairbanks, 456 P.2d 470 (Alaska 1969).

We note that the legislature has done this in its new Title 29, Municipal Code. AS 29.13.100 provides in part:

'Only the following provisions of this title apply to home rule municipalities as prohibited on acting otherwise than as provided.'

The significance of Jefferson v. State becomes clear when the UCLA-Alaska Law Review article is read. The author of the article stated that the Chugach case was a

Exxon Company, U.S.A.
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radical deviation and a reversal from the line of home rule decisions that preceded it. Jefferson v. State on the other hand shows that the Supreme Court was aware of its error in adopting the local activities rule. The opinion stands as a guide to home rule cities that they may legislate in all areas not prohibited by law or charter.

It may be argued that in some cases application of the "prohibition" instead of the "local activities" test is not of major importance since the results tend to be the same. Certainly in Jefferson v. State the court held that the Anchorage Charter provision against sale of public utilities except by three-fifths vote fell in light of the general law provision that the area wide sewer power could no longer be exercised in the City once it had been properly assumed by the Borough. In the next case of conflict between state law and municipal home rule ordinance, Adkins v. Lester, 530 P.2d 11 (Alaska 1974), the court held that a Fairbanks city ordinance to the extent that it was in conflict with state traffic regulations constituted an exercise of home rule power expressly prohibited by the legislature. The court cited with approval on its previous statement in Jefferson v. State, at 527 P.2d 43 namely that the question of validity of municipal ordinances rests whether the exercise of the authority has been prohibited to municipalities.

The significance, however, of the adoption of the "prohibition" test in the instant situation, as opposed to the "local activities" test, lies in the fact that the provisions of the home rule charter of the City of Valdez and state law need alone be addressed in determining whether or not the City can issue bonds for marine terminal purposes. The court in deciding whether or not this power may be exercised need not consider whether the borrowing by the City for this purpose is a matter of statewide concern. Such an examination would be required under the local activities test.

The court was assisted in Jefferson v. State by the legislative expression in AS 29.13.100 which provides in part:

Exxon Company, U.S.A.
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"Only the following provisions of this title apply to home rule municipalities as prohibitions on acting otherwise than as provided."

At footnote 23, at 527 P.2d page 43 the court stated that: "If the legislature wishes to pre-empt the entire field, they must so state."

In Koderick v. Sullivan, 528 P.2d 450 (Alaska 1974) at page 455, the court noted that AS 29.13.100 constituted a specific provision that state law on reapportionment (AS 29.23.020) prohibited future home rule enactments which provide otherwise, quoting with approval Jefferson v. State. The court again quoted Jefferson v. State in Adkins v. Lester, 530 P.2d 11 at page 15 in determining that the legislature had expressly prohibited a home rule city from enacting an ordinance in conflict with state regulations in regard to the use and operation of motor vehicles.

The holding of the Jefferson v. State affirms the uniqueness of the Alaska Constitutional home rule provision and makes inapplicable most of the law review articles and cases in other states dealing with the scope of home rule.

As noted in the footnote 26 at Jefferson v. State, 527 P.2d 42, Alaska's home rule provision is a "sword" not a "shield". It does not carve out any area where the state may not act by requiring a court determination of whether the exercise of a municipal power is statewide or local in nature. The court does not have to make such a determination because it must only determine whether the exercise of power is prohibited to municipalities. In discussing the Alaska home rule constitutional provision at 48 Minnesota Law Review 643, 686 The Limits of Municipal Power Under Home Rule: A Role for the Courts, Terrance Sandalow, it is stated that it grants broader power than is granted in any other state constitution.

The court's interpretation of the home rule provision in Article X, §11 of the State Constitution is consistent with §1 of Article X, the introductory section to the Article on Local Government in the Alaska Constitution, which reads:

"The purpose of this article is to provide for a maximum local self government with a minimum of local government units, and prevent duplication of tax-levying jurisdiction. A liberal construction shall be given to the powers of local government units."

The most recent dealing with Article X, §11 of the Alaska Constitution is Area Dispatch, Inc. v. City of Anchorage, 544 P.2d 1024 (Alaska 1976). The court found no prohibition in State law on the City establishing a lesser percentage of signatures necessary for referendum vote than fixed in State law. It instead found that the Charter itself fixed the limitation by reference to State law. Before holding on the point the court stated:

"Article X, §11, of the Alaska Constitution provides that home rule cities 'may exercise all legislative power not prohibited by law or charter'. Numerous court opinions and commentators have explained that a municipal ordinance of a home rule municipality is not invalid because 'it is inconsistent or in conflict with a state statute. The question of validity of the conflicting ordinance rests on whether the exercise of the authority has been prohibited to home rule municipalities. 'The prohibition must be either by express terms or by implication such as where the statute and ordinance are so substantially irreconcilable that one cannot be given its substantive effect if the other is to be accorded the weight of law.'"

It cannot be said, in our view, that the State legislation permitting industrial development bond financing through the Alaska Industrial Development Authority (AS 44.61) constitutes an implied prohibition on the City of Valdez undertaking such a financing. This statute and Ordinance No. 7525 of the City are in no degree "irreconcilable". Further, port financings have as a factual matter been undertaken by Alaska cities such as Anchorage for many years even though the freight activity is by no means limited to that city.

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Public Purpose Question

Article IX, Section 6 of the Alaska Constitution provides that

"No tax shall be levied, or appropriation of public money made, or public property transferred, nor shall the public credit be used, except for a public purpose."

The leading and original case on revenue bond financing in Alaska is DeArmond v. Alaska State Development Corporation, 376 P.2d 717 (Alaska 1962). The Corporation's function was to provide mortgage money for development loans within the State. The court held that the issuance of revenue bonds or debentures secured only by revenues of the Corporation to raise money for this purpose did not violate Article IX, Section 6 for two reasons. First, it found that the Corporation did serve a public purpose and in so finding it held that a State loan of \$150,000 to the Corporation was valid. Secondly, it found that since the Corporation's bonds are payable only from revenues of the Corporation, and that the State was not indebted or obligated meant that the transaction did not violate Article IX, Section 6. The court stated at page 722 as follows:

"No public funds are being transferred to the corporation other than the loans just mentioned. Funds realized from the sale of certificates will come from private sources. The credit of the State is not being pledged. Even though we have found that the corporation's activities will serve a public purpose, it is clear enough that its objectives must be accomplished without the use of public funds and State credit. No violation of the Constitution has been shown."

In Walker v. Alaska State Mortgage Association, 416 P.2d 245 (Alaska 1966), the court followed its holding in the DeArmond case in finding that activities of the Association in the selling of bonds to provide funds to make mortgage loans constituted a public purpose. The court held that the authority to issue bonds did not violate Article IX, Section 6 of the Constitution which requires that State debts be authorized for capital improvements and ratified by the voters. The court stated that

"In DeArmond, we concluded that the funds realized through the sale of bonds backed only by the resources and credit of the corporation and which did not constitute debts of the State were not public funds. We are of the opinion that our holding in DeArmond is controlling here and conclude that bonds, notes and debentures of the association are not debts of the State of Alaska within the scope of Article IX, Section 8 of our Constitution."

Two things should be noted about these above two cited cases. First, the court found that the funds derived from the sale of revenue bonds are not public funds and in two cases holds that this is an independent ground for the transaction not to be prohibited by Article IX, Section 6. Secondly, in the Walker case the court has direct occasion to consider whether or not the restriction that State debt must be issued for capital improvements applies to revenue bonds issued by a corporation of the State and never even considers the point but holds nevertheless that the revenue bonds should not be characterized as State debt under Article IX, Section 8.

The other major Alaska case considering the above question is Wright v. City of Palmer, 468 P.2d 326 (Alaska 1970). The court there considered whether or not the authorization by the City of Palmer of general obligation bonds to provide funds to construct a manufacturing plant for lease to private enterprise violated the lending of credit provision of AS 37.10.085 which prohibits either the State or a political subdivision from lending its credit for the use of a private corporation, or borrowing money for the use of a private corporation. The court also considered whether the transaction violated Article IX, Section 6 of the Alaska Constitution. The court concluded that the question of whether the public credit is being pledged for private purposes was also comprehended under the broader question of whether a public purpose was served by the bond issue and plans for its expenditure. In holding that the plan did constitute a public purpose it cited DeArmond and Walker. The second ground of Walker and DeArmond, namely, that since the bonds were revenue bonds, payable only from project

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revenues, there was no violation of Article IX, Section 6, was obviously not available to the court. The court stated however, in footnote four on page 329 that

"The courts which have upheld bonding projects as a legitimate exercise of power by the political subdivisions have held that a statute which pledges only project revenues does not pledge the public credit, and, therefore does not lend the public credit in aid of anyone." (citing cases)

There are several additional features of Wright v. City of Palmer, which are relevant to the instant situation. In the first place it should be noted that unlike the situation in DeArmond and Walker there was no specific authority in State statutes for the transaction. That is to say the Legislature had not directly spoken on the subject matter nor had it made legislative findings that a public purpose would be served by authorizing the issuance of local government bonds for manufacturing or industrial plants. The fact that the Legislature had spoken in other contexts on the desirability of public assistance to induce new industries was briefed and noted by the court in its reference to the power of the City Council to lease property to industries. In any event, the important fact is that the court considered the action of the City Council of Palmer to have equal dignity with State legislative action on the subject matter. It stated that

"The role of the courts in matters of this kind is relatively limited. Our function is not to determine whether, as prudent burghers, we might think this plan wise"

"If the city fathers and the voters of the community feel that this plan of action is necessary, it is not for us to retard them. It is within their legislative province to determine whether the advantages outweigh the risks."

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The limits which Justice Connor set on the scope of the court's function in deciding these matters is of importance in determining the rationale of the decision. The court states at page 331

"If the plan of action were plainly foolhardy, or if amounted to the pledging of credit or giving away of assets without any corresponding discernible benefit, we might be persuaded to strike down the plan."

There is nothing in this judicial expression of the court's role in determining cases of this nature which indicates that a plan of action would be found unconstitutional if indeed it could be proven that a particular industry would have located within municipal boundaries regardless of the availability of public financing. Although the case seems to assume that the availability of public financing was an inducement to location there is nothing in the record that the fact of location without the public financing would cause the court to strike the plan down. The court did state the parameters of judicial scrutiny, namely, that the plan must be plainly foolhardy or amount to the pledging of credit or the giving away of assets without any corresponding discernible benefit in order for it to be stricken. There is nothing in our view, in the instant situation which can be characterized under this terminology and indeed, assisting in the financing of the pipeline has obvious direct and ancillary public purpose benefits both to the State of Alaska and to the City.

If you require further analysis of the above points, please call on us.

Very truly yours,

WOHLFORTH & FLINT

By _____
Eric E. Wohlforth

EEW:jf

Neal WRIGHT, Appellant,
v.

CITY OF PALMER, Municipal Corporation,
State of Alaska, Theodore Schmidtke, Mayor,
Emilie St. Pierre, City Clerk, and Members
of the City Council of the City of Palmer,
Appellees.

No. 1192.

Supreme Court of Alaska.
April 27, 1970.

Declaratory judgment action to invalidate city's issuance of general obligation bonds. The Superior Court, Third Judicial District, C. J. Occhipinti, J., granted judgment, and appeal was taken. The Supreme Court, Connor, J., held that issuance of general obligation bonds to finance a 20-year improvement program providing for purchase of a site and construction of a manufacturing and processing facility which would be leased to a private corporation did not, under circumstances presented constitute an unlawful lending of credit to a private corporation and did not constitute a violation of "capital improvement" and "public purpose" requirements of Constitution.

Affirmed.

1. Municipal Corporations $\S$ 722

It is within statutory power of a city to make available industrial sites which may be of benefit to municipality and to lease them on terms which are advantageous to public welfare of city. AS 29.10.132(c).

2. Municipal Corporations $\S$ 869, 873

Issuance of general obligation bonds to finance a 20-year improvement program providing for purchase of a site and construction of a manufacturing and processing facility to be leased to a private corporation, where significant restrictions and controls were retained by city over corporation's operations, did not constitute a violation of statute prohibiting the state or a political subdivision from lending its credit or borrowing money for use of a private corporation. AS 37.10.085.

3. Municipal Corporations $\S$ 911

Land and building to be obtained by municipality through issuance of general obligation bonds under a 20-year improvement program providing for purchase of a site and construction of a manufacturing and processing facility, where city's real ownership of structure would increase as years of rental payment went by, constituted "capital improvements" within Constitution providing that no debt shall be contracted by a political subdivision unless for capital improvements. Const. art. 9, $\S$ 9.

See publication Words and Phrases for other judicial constructions and definitions.

4. Municipal Corporations $\S$ 911

In determining whether a community development plan financed through issuance of general obligation bonds fulfills "public purpose" requirement of Constitution, test is whether plan is so unreasonable as to transgress limitations of Constitution. Const. art. 9, $\S$ 6.

5. Municipal Corporations $\S$ 910

Although development of industry within a community through issuance of general obligation bonds is not always an unmixed blessing, as it may impose burdens on other public facilities, it is hard to see how municipality, contrary to "public purpose" provision of Constitution would be hurt by location of an industry within its boundaries, where its plight is that of an eroding economic community and where city fathers and voters of community feel that a plan of action is necessary. Const. art. 9, $\S$ 6.

Frie E. Wohlforth, of McGrath & Wohlforth, Anchorage, for appellant.

Burton C. Biss, Anchorage, for appellees.

OPINION

Before DIMOND, Acting Chief Justice, and RABINOWITZ, BONEY, and CONNOR, Justices.

CONNOR, Justice.

This case questions the validity of a general obligation bond issue for the purpose of encouraging industrial development within a municipality. This is a declaratory judgment action in which appellant, in his capacity as a resident of and owner of real and personal property in the City of Palmer, seeks to have declared invalid the issuance of bonds by the city. These bonds were authorized at a special election at which the proposition carried by a vote of 248 in the affirmative and 7 in the negative. The proposition submitted to the voters was as follows:

PROPOSITION NO. 1

Shall the City of Palmer, Alaska, issue general obligation bonds in an amount not to exceed Four Hundred Fifty Thousand Dollars (\$450,000.00) for the following purpose: Under a 20-year improvement program providing for the purchase of a site and the construction of a manufacturing and processing facility within the City of Palmer. All said general obligation bonds shall mature within twenty years from the date of issue and bear interest at a legal rate.

After the proposition was approved by the voters, the city entered into an agreement with Huskey Manufacturing Corporation, a manufacturer or assembler of industrial housing, low-cost residential housing and mobile homes, by which the corporation agreed that it would in the future enter into a lease and occupy the building to be constructed, for a period of not less than 20 years, to keep its raw materials within the city limits in order to render

it subject to personal property taxation, to employ not less than 80% of its personnel from the Palmer area, to maintain training facilities for its employees, and to maintain on-the-job training programs under federal and state auspices. It also agreed, as a condition to entering into a lease, that it would use the public utilities owned by the city, as far as they are available. The company agreed that the paved parking lot adjacent to the building should be available at all reasonable times for public recreational uses. The agreement also provides that the rental shall be fixed in such an amount that the total cost of the project, including the sums necessary to amortize the bonds sold to finance the project, shall be payable over a 20-year period under a reasonably uniform schedule through the term of the lease. In short, the city would procure or make available land and a structure for the use of the lessee, using the bond proceeds to accomplish this end.

This case obviously has been brought for the purpose of testing the validity of the bond issue and to determine whether the bonds are marketable. The record is somewhat one-sided in that all of the evidence was presented by the city, although the witnesses for the city were cross-examined by counsel for appellant. On the other hand, the legal questions have been thoroughly argued and briefed. Unlike the situation in *Ault v. Alaska State Mortgage Association*, 387 P.2d 608 (Alaska 1963), we do find the record sufficient for determining the legal issues presented in this case.¹ Unlike *Ault*, where a summary judgment was entered, this case went to a trial on

1. In *Jefferson v. Asplund*, 458 P.2d 895, 898 (Alaska 1963), this court held that an actual controversy is a prerequisite to the granting of declaratory relief under the Alaska statute permitting declaratory judgment actions. We further cited with approval the definition of "controversy" found in the opinion by Chief Justice Hughes in *Acton Life Insurance Company of Hartford, Conn. v. Haworth*, 300 U.S. 227, 57 S.Ct. 401, 81 L.Ed. 617 (1937):

"A 'controversy' in this sense must be one that is appropriate for judicial determination. . . . A justiciable controversy is thus distinguished from a difference or dispute of a hypothetical or abstract character; from one that is academic or moot. . . . The controversy must be definite and concrete, touching the legal relations of parties having adverse legal interests." (Citations omitted.)

the merits under the provisions of Rule 57(a), Rules of Civil Procedure.²

The testimony and evidence presented show a pattern of serious economic problems which the City of Palmer is seeking to overcome. The City Council in the agreement to lease makes a recital of its findings about the economic plight of the City of Palmer and its environs. The pattern which emerges from the evidence is that over the course of the last several years the economic growth of Palmer has been nil. The Palmer Comprehensive Development Plan of 1967, prepared by the city, discloses a high year-round rate of unemployment. Virtually no manufacturing exists in the City of Palmer. At one time coal mines were operated in the Palmer area, but these have been shut down because Elmendorf Air Force Base and Fort Richardson, the prime consumers of coal, now utilize natural gas for heating and the generation of electricity. The closure of the mines has resulted in a loss of payroll for the Palmer area estimated at something over one million dollars per annum. Lumber processing has

ceased in the Palmer area, with a loss of about 20 jobs. Various other business activities have moved out of the Palmer area recently, including the Matanuska Valley Cooperative Association, the Sears & Roebuck store, and other businesses. Palmer has recently been declared a depressed area by the federal government. It is in an effort to combat this declining economy that the city has proposed the issuance of bonds, the erection of a manufacturing building, and its lease to a private corporation. It is estimated that the proposed project, when fully operational, would employ approximately 65 to 110 persons on a full-time basis.

IS THERE AN UNLAWFUL LENDING OF CREDIT?

[1, 2] It is asserted that the bond issue and plan of action violates AS 37.10.085,³ which prohibits either the state or a political subdivision to lend its credit for the use of a private corporation, or to borrow money for the use of a private corporation. We note at the outset that the city is not handing money directly to a private

2. "Rule 57. Declaratory Judgments - Judgments by Confession. (a) Declaratory Judgments. The procedure for obtaining a declaratory judgment pursuant to statute shall be in accordance with these rules, and the right to trial by jury may be demanded under the circumstances and in the manner provided in Rules 38 and 39. The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate. The court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar."

Many actions such as the one in the instant case have been entertained by other state courts.

"Municipal financing legislation and projects have frequently been questioned in taxpayer suits, on the ground that they violate state constitutional provisions prohibiting the use of public funds or credit for purposes which are not 'public.' Often such suits are brought by industrialists and others who seek prior judicial approval of a project. [Footnotes omitted.] In most cases, the projects and legislation have been upheld. [Newberry v. City of Andra-

bia, 257 Ala. 49, 57 So.2d 629 (1952); Wayland v. Snapp, [232 Ark. 57], 324 S.W.2d 623 (Ark.1960); Dyke [sic] v. City of London, 288 S.W.2d 648 (1956); Miller v. Police Jury, 226 La. 8, 74 So.2d 394 (1954); City of Frostburg [Frostburg] v. Jenkins, 215 Md. 9, 136 A.2d 852 (1957); Village of Deming v. Hoadreg Co., 62 N.M. 18, 303 P.2d 929 (1956); Holly v. City of Elizabethton, 193 Tenn. 40, 241 S.W. 2d 1001 (1951); McConnell v. City of Lebanon, 203 Tenn. 498, 314 S.W. 2d 12 (1958). *Contra*, State v. Town of No. Miami, 50 So.2d 779 (Fla.1952); State ex rel. Beck v. City of New York, 161 Neb. 223, 82 N.W.2d 239 (1957).]" 70 Yale Law J. 789, at 791 and n. 15, "The 'Public Purpose' of Municipal Financing for Industrial Development."

3. "Financial aid to corporations by state or political subdivision. Neither the state nor a political subdivision of the state may (1) make a subscription to the capital stock of a corporation; (2) lend its credit for the use of a corporation; or (3) borrow money for the use of a corporation."

corporation. Nor is it pledging that its credit or taxing powers may be used to make good the indebtedness of a private person in contravention of the Alaska Constitution.⁴ It is within the statutory power of a city to make available industrial sites which may be of benefit to the municipality and to lease them on terms which are advantageous to the public welfare of the city. AS 29.10.132(c).⁵ Since significant restrictions and controls are retained by the City of Palmer over Huskey Manufacturing Corporation's operations, the bond issue in question is not violative of AS 37.10.085. These controls and restrictions were imposed upon the corporation to insure the effectuation of the public purpose objective of this bond issue. *Roe v. Kervick*, 42 N.J. 191, 199 A.2d 834 (1964). We think that the question of whether the public credit is being pledged for a private purpose is also comprehended under the broader question of whether a public purpose is served by the bond issue and plan for its expenditure, which is discussed below.

IS THE PROJECT A CAPITAL IMPROVEMENT?

The contention is made that the indebtedness would violate Article IX, § 9, of the Alaska constitution⁶ which requires that

such debt can be incurred only for capital improvements. It is argued that in *City of Juneau v. Hixson*, 373 P.2d 743 (Alaska 1962), this court laid down a strict test of what constitutes a "capital improvement," rendering that term synonymous with "public works of a permanent character." Because an industrial development project is not clearly within that category, it is said that the plan before us must fail.

We do not read the *Hixson* case so narrowly. There we struck down a bond issue because no capital improvement would have resulted from the expenditure of the proceeds. The vice in the *Hixson* case was that raw land would have been acquired with the proceeds and would then have been donated to the State of Alaska as a proposed capitol site. As a result of the plan, the City of Juneau would have been left with no tangible asset in place of the indebtedness. Furthermore, the State of Alaska had entered into no agreement for and had not otherwise shown an interest in the acquisition or use of any capitol site.

[3] By contrast, in the case before us the City of Palmer will own a tangible asset. The plan is that the indebtedness shall be retired out of the rental money received over the life of the bond issue. The land and building fulfill the definition of "capital improvements" which was stated in the

4. Alaska Const., art. IX, § 6:

"Public Purpose. No tax shall be levied, or appropriation of public money made, or public property transferred, nor shall the public credit be used, except for a public purpose."

The courts which have upheld bonding projects as a legitimate exercise of power by the political subdivisions have held that a statute which pledges only project revenues does not pledge the public credit, and, therefore does not lend the public credit in aid of anyone. *Newberry v. City of Andalusia*, 277 Ala. 49, 57 So.2d 629 (1952); *Wayland v. Snapp*, 232 Ark. 57, 334 S.W.2d 623 (1960); *Bennett v. City of Mayfield*, 323 S.W.2d 573 (Ky.1959).

5. "City properties. * * *

(c) The council, in order to make sites available for new industries which will benefit the municipality, may likewise acquire, own and hold such sites, including

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Alaska Rep. 466-477 P.2d—3

real property, either inside or outside the corporate limits and may sell, lease or dispose of them upon the terms and conditions as it considers advantageous to the civic welfare of the city, to persons who will agree to install, maintain and operate a beneficial new industry. Sites acquired under this paragraph and any right, equity, claim or title acquired by the municipality to real property sold to it for delinquent taxes are not 'property acquired, owned or held for or devoted to a public use' as used herein."

6. Alaska Const., art. IX, § 9:

"Local Debts. No debt shall be contracted by any political subdivision of the State, unless authorized for capital improvements by its governing body and ratified by a majority vote of those qualified to vote and voting on the question."

Hixson case⁷ as being "associated with value represented by real or personal property in some form and with relative permanency." 373 P.2d, at 717. There is here no giving away of the asset. On the contrary, the city's real ownership of the structure should increase as the years of rental payment go by. Even if the tenants should default, the building probably would be susceptible to a number of other beneficial uses. We conclude, therefore, that the bond issue and the plan of expenditure does not violate the capital improvement requirement of our constitution.

IS THERE A FULFILMENT OF PUBLIC PURPOSE?

Article IX, § 6, of the Alaska constitution provides that "[n]o tax shall be levied, or appropriation of public money made, or public property transferred, nor shall the public credit be used, except for a public purpose." It is asserted that the bond issue and the plan for its expenditure violates this provision.

In *DeArmond v. Alaska State Development Corporation*, 376 P.2d 717 (Alaska 1962), this court noted that the term "public purpose" is one of great imprecision. As we said there,

7. In *City of Juneau v. Hixson*, 373 P.2d 743 (Alaska 1962), this court defined "capital improvement" as follows:

"The trial court was correct in holding that the bond issue herein was not for a capital improvement. Assuming for the moment that the expenditure of the money could accomplish the desired objective, the end product would lack most of the attributes usually associated with the completed public project for which general obligation bonds have been sold. No permanent asset in the form of real or personal property would accrue to the city. The property acquired by the proceeds would be donated to the state. No thing of value would remain the property of the city. No improvement of general use or service to the taxpayers of the city would have been created by the expenditure. No tangible security for the bonded indebtedness would have been created - in fact, the total security would have been reduced by the removal of some seven

"We believe that it would be a disservice to future generations for this court to attempt to define it. It is a concept which will change as changing conditions create changing public needs. Whether a public purpose is being served must be decided as each case arises and in the light of the particular facts and circumstances of each case." 376 P.2d at 721.

The technique used by most courts is that of looking to the entire factual and governmental context to determine whether a particular plan of action serves a public purpose.⁸ In the area of industrial development bond issues, numerous decisions have upheld such plans.⁹ There is much criticism which can be leveled against a community using its public borrowing capacity to sponsor or induce the location of private industry within its boundaries. Many of these plans have been attacked on grounds of public policy, but they have been sustained frequently by the courts.¹⁰ It is true that such plans are susceptible to abuse. Municipalities have been known to go bankrupt after having induced an industry to come to them under such a plan.¹¹ There are dangers that an industry locating in a community may end up dominating the political and economic processes. On the

acres of downtown property from the city's tax rolls." 373 P.2d, at 718.

8. See Note, "Legal Limitations on Public Inducements to Industrial Location," 50 *Columbia Rev.* 618 (1959).

9. *Newberry v. City of Andalusia*, 257 Ala. 19, 57 So.2d 629 (1962); *Wayland v. Snapp*, 232 Ark. 57, 331 S.W.2d 623 (1960); *Dyche v. City of London*, 288 S.W.2d 613 (Ky. 1956).

10. Although courts have split on the validity of revenue bond plans, the weight of authority is in their favor. Pinsky, "State Constitutional Limitations on Public Industrial Financing: An Historical and Economic Approach," 111 U. of Pa. L. Rev. 265, 276 n. 63 (1963).

11. Long-run economic and social changes are ever present sources of financial risk. Population shifts or widespread economic recession may render unworkable fiscal policies that were once considered sound. These risks, however, are inevitable concomitants of public decision making.

other hand, it is recognized that the location of an industry in a particular community may have widespread economic benefits and that these do fulfill the public purpose and the general welfare of the community, broadly conceived. The tendency in most of the modern case law is to broaden the notion of public purpose to include such projects as the one contemplated by the City of Palmer.¹²

In *Walker v. Alaska State Mortgage Association*, 416 P.2d 245 (Alaska 1966), and in *Suber v. Alaska State Bond Committee*, 414 P.2d 516 (Alaska 1966), such broad notions of public purpose were applied. As we observed in the *Suber* case,

"The basic objective of government is to protect and promote the health, safety and general welfare of the people. When a condition of affairs appears in the state which presents a threat to the accomplishment of that objective, the government has the right, and the obligation, to cope with such threat by whatever measures, within constitutional limits, that are necessary or appropriate." 414 P.2d, at 551-552.

[4] The role of the courts in matters of this kind is relatively limited. Our function is not to determine whether, as prudent burghers, we might think this plan wise. *City of Juneau v. Hixson*, supra.

12. In the cases applying the public purpose doctrine and the public aid limitations to the fields of transportation, recreation, and parking, courts have placed

The test which we must apply is whether the plan is so unreasonable as to transgress the limitations of our constitution. If the plan of action were plainly foolhardy, or if it amounted to the pledging of credit or the giving away of assets without any corresponding discernible benefit, we might be persuaded to strike down the plan. But that is not the case here.

[5] The benefits from the plan of the City of Palmer may be enjoyed in part by some individuals more than by others. But collective advantages to the community at large can be perceived quite readily. Although the development of industry is not always an unmixed blessing, as it may impose burdens upon other public facilities, it is hard to see how the City of Palmer could be hurt by the location of an industry within its boundaries. Its plight at the moment is that of an eroding economic community. If the city fathers and the voters of the community feel that this plan of action is necessary, it is not for us to retard them. It is within their legislative province to determine whether the advantages outweigh the risks.

Because we think the public purpose of the project has been demonstrated, we find the bond issue valid.

Affirmed.

considerable emphasis on the public importance of the project and the urgency of the need for public financing. *Musky*, supra note 10.

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Re: Issuance of Revenue Bonds
by the City of Valdez, Alaska

Dear Dr. LeResche:

Concern has been expressed as to whether Section 37.10.085 of the Alaska Statutes would be violated if the City of Valdez, Alaska, issues its revenue bonds (the "Bonds") and the proceeds thereof were made available for the acquisition and construction of certain economic development facilities and other facilities for general public use necessary for the petroleum refinery to be built by The Alpetco Company ("Alpetco") in the City.

Section 37.10.085 states:

Neither the state nor a political subdivision of the state may

- (1) Make a subscription to the capital stock of a corporation;

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- (2) Lend its credit for use of a corporation; or
- (3) Borrow money for the use of a corporation.

This section was discussed in Wright v. City of Palmer, 468 P2d. 326 (Alaska 1970), which involved an issue of general obligation bonds by the City of Palmer to finance manufacturing facilities for Huskey Manufacturing Corporation and the lease of such facilities to Huskey. The Court found that the bond issue did not violate AS §37.10.085 in that no money was being handed directly to the corporation, nor was the City pledging its credit or taxing power to make good the indebtedness of a private person. The Court did not find unreasonable the determination of the City that the facilities were to serve a public purpose.

Because the Wright decision involved general obligation bonds it is very strong authority to the effect that the issuance of revenue bonds by the City of Valdez for facilities to be used by a private corporation would not violate §37.10.085. The Alaska Supreme Court recognized in Wright the theory that a statute which pledges only project revenues does not pledge the public credit and therefore does not lend the public credit in aid of anyone. This confirms the position of the Supreme Court in De Armond v. Alaska State Development Corporation, 376 P2d. 717 (Alaska 1962) wherein the Court held that the Alaska State Development Corporation could borrow funds to aid in industrial development. The primary theory in upholding this power was that the credit of the state was not pledged and therefore no public funds or credit were involved.

This is further made clear by Section 11 of Article IX of the Alaska Constitution which states:

The restrictions on contracting debt do not apply to debt incurred through the issuance of revenue bonds by a public enterprise or public corporation of the State or a political subdivision, when the only security is the revenues of the enterprise or corporation. The

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restrictions do not apply to indebtedness to be paid from special assessments on the benefited property, nor do they apply to refunding indebtedness of the State or its political subdivisions.

Based on our review of the Constitution, statutes and case law of the State of Alaska, we are of the opinion that the issuance of the Bonds as contemplated by Resolution No. 7953 of the City of Valdez would not be in violation of §37.10.085 of the Alaska Statutes.

Kutak Rock & Huie

ALASKA INTERSTATE COMPANY

P. O. Box 6554

HOUSTON, TEXAS 77005

O. CHARLES HONIG
CHAIRMAN OF THE BOARD

December 14, 1979

The Alpetco Company
c/o Alaska Petrochemical Company
3700 Buffalo Speedway
Houston, Texas 77098

Dear Sirs:

The undersigned, Alaska Interstate Company, is a 75.45% shareholder of Alaska Petrochemical Company which is a partner in The Alpetco Company ("Alpetco"). Alpetco was established as of October 1, 1979, to receive an assignment of the rights and to assume the obligations of Alaska Petrochemical Company under the Agreement for the Sale and Purchase of State Royalty Oil dated February 22, 1978, and amended May 17, 1978 (the "Royalty Oil Contract"), between the State of Alaska and Alaska Petrochemical Company. Alaska Petrochemical Company has made certain commitments today to Alpetco to provide assurances to the Commissioner of Natural Resources of the State of Alaska (the "Commissioner") that at least \$23.4 million in Total Project Costs (as defined in the Royalty Oil Contract) actually will have been expended by a certain date. The other partners in Alpetco have provided similar commitments in respect of an additional \$76.6 million in expenditures.

To provide further assurances to the Commissioner, the undersigned commits that if, and to the extent, Alaska Petrochemical Company should fail, in whole or in part, to fulfill Alaska Petrochemical Company's commitment relating to expenditures in accordance with its terms, the undersigned hereby commits to fulfill at least its pro rata share of such commitment, and if needed, hereby commits to fulfill all of Alaska Petrochemical Company's commitment hereunder.

The above commitment of the undersigned is made, with similar commitments by the shareholders of the partners in Alpetco other than Alaska Petrochemical Company, solely for the purpose of providing the Commissioner assurances that at least \$100 million in Total Project Costs actually will have been expended prior to the time crude oil is available to the State of Alaska for delivery to Alpetco under the Royalty Oil Contract.

This letter replaces our letter on this same subject which was dated December 13, 1979.

Yours very truly,

ALASKA INTERSTATE COMPANY

O. Charles Honig

ALASKA PETROCHEMICAL COMPANY

3700 BUFFALO SPEEDWAY
HOUSTON, TEXAS 77098
TELEPHONE 713 840-1243 TELEX 791461

December 18, 1979

Dr. Robert E. LeResche
Commissioner
Department of Natural Resources
Pouch "M"
Juneau, Alaska 99811

HAND DELIVER

Re: Agreement for the Sale and
Purchase of State Royalty
Oil between Alaska
Petrochemical Company and
the State of Alaska dated
February 22, 1978

Progress Report #18

Dear Commissioner LeResche:

Pursuant to Article 4.2.3 of the above referenced Agreement (the "Agreement"), Buyer's Progress Report for the month ending November 30, 1979 is as follows:

1. Compliance with Article 10.2 of the Agreement:

Although this Progress Report No. 18 covers the month ending November, 1979, Alpetco delivered letters, reports, and other documents to the Commissioner of Natural Resources on December 13, 1979 in support of Alpetco's compliance with Article 10.2(3)(a)-(h) of the Agreement. Such material was hand delivered to the Commissioner and the State's advisors in Seattle, Washington.

In addition to the material submitted to the Commissioner on December 13, 1979, Alpetco is today submitting supplemental material in further support of Alpetco's compliance with Article 10.2(3)(d) and (e) of the Agreement. Such material is attached hereto and enclosed by reference.

ALASKA PETROCHEMICAL COMPANY

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Commissioner

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2. Engineering, Design and Construction:

During November, engineering work continued in support of the project's December 18 contract "benchmark" requirements.

On November 19, 1979 Alpetco submitted to the Commissioner and Mr. Thomas Cook, Director of Division of Minerals and Energy Management, copies of all material state, local and federal permit applications as outlined in Commissioner LeResche's letter to Gordon Cain dated September 27, 1979.

On December 7, 1979, the Alpetco Draft Environmental Impact Statement and Appendices were published in the Federal Record.

On December 7, 1979, Alpetco signed an Engineering Construction Contract with Thyssen Rheinstahl Technik GmbH of Dusseldorf, West Germany and Foster Wheeler Energy Corporation of Linden, New Jersey. Under the terms of this agreement, Thyssen and Foster Wheeler will provide Alpetco with a fixed price for the construction of the refinery and in addition will give Alpetco a completion and performance guarantee for the project. Thyssen and Foster Wheeler will be the prime contractor for the project.

No construction activities took place during the month of November or during the first part of December, 1979.

3. Marketing:

Charter Oil (Alaska), Inc. has entered into an agreement with The Alpetco Company, a joint venture partnership of Alaska Petrochemical Company, Charter Oil (Alaska), Inc. and E. F. Hutton (Alaska) Inc. to purchase 70% of the output of the Valdez facility. This contract is effective December 1, 1979.

4. Financing and Expenditures:

During the month of November and early part December, 1979