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# Joint Gas Pipeline Committee
## Alaska State Legislature

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JOINT GAS PIPELINE COMMITTEE

REPORT

on the status of the contract between the State of Alaska and the Alaska Petrochemical Company, and the progress of the Alpetco project utilizing Alaska royalty crude oil; May 15, 1980

AGO 559766

The Constitution of the State of Alaska calls for the Legislature to provide for the utilization, development and conservation of all natural resources belonging to the State, including land and water, for the maximum benefit of the people. It was within this context that the Legislature ratified the agreement for the sale and purchase of state royalty oil, as amended, to the Alaska Petrochemical Company on June 18, 1978. Since that time there has been little done in the way of legislative oversight of the project and little or no legislative comment on its progress. However, as a critical juncture in the contract is upcoming -- the taking of royalty oil by Alpetco -- the Legislature has exercised its oversight mandate and started reviewing the status of the project and the compliance of Alpetco with the contractual intent and provisions.

At the request of the Speaker of the House, the Committee undertook an extensive review of the Alpetco project and held hearings on April 28 and May 8, 1980. Several issues surfaced during this review process which form the basis of this Committee report:

1. Present and projected future crude oil needs of existing instate refiners indicate crude supply deficits for both current and future operations;



AGO 559767

2. The project, as presented to the Legislature in 1980, differs markedly from the project of 1978, with the people of Alaska receiving substantially reduced material benefits;
3. Substantial doubt exists as to the degree with which Alpetco complied with its contractual obligations, specifically those under Art. 10.2.3, the 18 month benchmarks, and Art. 4.2.1, reasonable diligence;
4. The economic feasibility of the Alpetco project remains undemonstrated, and the recent, sudden withdrawal of Alaska Interstate Company increases doubts as to the project's longterm economic viability; and
5. The State risks not receiving full value, wise development and associated benefits from the in-kind use of royalty oil if Alpetco takes interim royalty crude beginning July 18, 1980.

These issues will be examined in more detail in the following report, with the Committee's findings stated on each.

ISSUE 1: PRESENT AND PROJECT FUTURE CRUDE OIL NEEDS OF EXISTING INSTATE REFINERS INDICATE CRUDE SUPPLY DEFICITS FOR BOTH CURRENT AND FUTURE OPERATIONS

The state's three refiners (Tesoro Alaska Petroleum, Chevron, and Earth Resources), and one prospective regional refiner (Tanana Valley Refining) testified as to their present and projected crude oil needs, and how those supply projections affect their current operations as well as their plans for expansion.



AGO 559768

Tesoro Alaska Petroleum indicated it has a current crude supply deficit of 14,000-15,000 barrels per day. Presently, Tesoro has met this deficit through a series of shortterm exchanges and a six month contract with the State for 4,600 barrels per day of North Slope crude. Tesoro's base supply is 34,000 barrels per day while the capacity of its Kenai refinery is 48,500 barrels per day, of which 15% can be North Slope sour crude. For the Alaska market, Tesoro produces motor gasoline, diesel fuel and commercial aviation fuel; residual fuel is exported. The current shortage of 14,000 barrels/day is expected to become a supply deficit of 31,000 barrels/day by 1981, due to declining production in Cook Inlet.

Chevron Alaska is currently the only instate refiner not receiving any royalty oil. Chevron vice-president R.F. Walsh testified, however, that receipt of royalty oil may be critical to Chevron's continued operation of its Nikiski refinery. On a longterm basis, Chevron estimates a need for 6,000 barrels/day of crude for the Nikiski refinery, plus 25,000 barrels/day for its California refinery to back up continued supply of products from that refinery to Alaska. Chevron operations currently supply about 24,000 barrels/day or 35% of the light products used in Alaska, plus 60% of the state's requirement for asphalt.

Earth Resources Refinery reported a current capacity of 32,000 barrels per day with an expected capacity of 42,000 barrels per day by October. Its crude supply is secure and adequate for its current facility because of its royalty oil contract with the State of Alaska. Earth Resources proposes to expand its refining capacity to 65,000 barrels per day by October of 1982 or 1983 in connection with a proposed petrochemical facility. Another proposal for future use of royalty crude was presented by Tanana Valley Refining which wants to build a small 5,000-10,000 barrel/day refinery at Fairbanks. The facility would produce middle distillates and gasolines.

THE COMMITTEE FINDS the established instate refiners have invested sizable amounts in Alaska; created jobs for Alaska residents; contributed to state and local revenues; and produced, marketed, and distributed products for use by the state's residents and businesses.

FURTHER certain instate refineries have a current shortage of crude oil and future, larger shortages may result from declining Cook Inlet production.

FURTHER it appears that both present and projected crude deficits may curtail currently established refinery operations and will impede proposed expansions of those operations.

ISSUE 2: THE PROJECT, AS PRESENTED TO THE LEGISLATURE IN 1980, DIFFERS MARKEDLY FROM THE PROJECT OF 1978, WITH THE PEOPLE OF ALASKA RECEIVING SUBSTANTIALLY REDUCED MATERIAL BENEFITS

Ownership

In 1978 Alpetco proposed a $2.5 billion petrochemical plant which was to offer benefits to Alaskans in terms of industrial development, construction work and permanent jobs, revenues, and general economic growth, all with little or no risk to the State.

Originally ownership was vested primarily in Alaskan incorporated companies and regional corporations: Alaska Interstate Company, 60%; Barbour Oil Company, 20%; and Alaska Consolidated Shipping, 20%. (Alaska Consolidated Shipping's 20% share was divided among Seatrain Lines of New York, 9.8%; and Aleut Corporation, Bristol Bay Native Corporation, Calista Corporation, Chugach Natives, Inc., Cook Inlet Region, Inc. and Koniag, Inc., 1.7% each). After the entrance of Charter/Alaska for 70% and E.F. Hutton/Alaska for 6.6% in October of 1979, the original members' total share dropped to 23.4%.

On May 8, 1980, Alaska Interstate Company announced its withdrawal, apparently without compensation for equity invested to date, resulting in the following reallocation of ownership: Charter/Alaska, 84.700%; E.F. Hutton/Alaska, 7.987%; Seatrain Lines, 6.600%; and the six regional corporations, .702% total or .117% each.

THE COMMITTEE FINDS that project ownership has shifted so that over 90% is now held by firms not incorporated in Alaska. FURTHER, these firms were not part of the original consortium; consequently, their assets, liabilities, industry skills and reputation, and business acumen were not reviewed by the Legislature prior to the original contract ratification. FURTHER, E.F. Hutton/Alaska is not authorized to do business in Alaska as it has not registered with the Alaska Department of Commerce and Economic Development.

FURTHER, the sudden unexpected withdrawal of Alaska Interstate without prior notification to the State raises questions about the stability of the joint venture. Rapid shifts in project ownership may affect Alpetco's ability to comply with its contractual obligations and to make due progress on the project, thus creating substantial risks to the state.

Products

In 1978 Alpetco officials repeatedly testified that their project, unlike those of other competitors for royalty oil, was a petrochemicals project, not a fuels refinery. Emphasis was on establishment of a worldscale ethylene plant, and production of ethylene, other olefins and aromatics. Alpetco stressed that they had deliberately chosen a petrochemical plant rather than a refinery, as world demand for petrochemicals would increase faster than fuels demand and the comparative benefits to Alaska would be considerably more. In fact,

fuels production was mentioned by Alpetco officials in 1978 only in the context of providing a minimum of fuels for Alaska's instate needs. The first "whereas" clause of the contract reflects the mutually understood intention regarding products:

> WHEREAS, it is in the mutual best interests of Seller and Buyer that Buyer construct and operate a petrochemical facility in Alaska to process the oil sold hereunder, said facility to have the capacity to process approximately 30,000 barrels per day of crude oil into energy fuels for in-state distribution and sale."

In 1980, in contrast, Alpetco proposes to produce 82.3% fuels, 7.8% naptha, and 9.3% aromatics, a products slate almost exactly the inverse of its 1978 configuration.

THE COMMITTEE FINDS that the Alpetco project is a fuels refinery, not a petrochemical facility. At best, it appears that the phase one facility will produce less than 20 percent chemicals and more than 80 percent fuels.

FURTHER, Alpetco has a sales agreement with its majority partner, Charter/Alaska, for 15 years which is based on the current fuels products slate.

FURTHER, the inclusion of naptha as a petrochemical is open to debate. The Committee notes that Alpetco's own 1980 documents mention naptha not as a petrochemical, but as a feedstock from which to make petrochemicals. In addition, it is not clear from the information presented to date that the aromatics will be produced as separate products rather than sold as a heterogenous material. Without naptha, petrochemical production is less than 10% of the proposed products.

FURTHER, although the Committee recognizes the need to build a facility in stages, the testimony of Alpetco officials indicates no binding commitment to construction of any subsequent stages of the facility. Although the Alpetco project may be "still as much a petrochemical facility as it always was," as Commissioner LeResche testified, the Committee finds that today's project is not the worldscale petrochemical facility it expected to be constructed as a result of the 1978 contract ratification.

Marketability

Alpetco's targeted markets remain the West Coast and Japan, with fuels destined for the West Coast and naptha and aromatics slated for Japan. In addition, Alpetco proposes to market 20,000 to 30,000 barrels per day of fuels in Alaska. To date, though, Alpetco's only sales agreement is with its majority partner, Charter/Alaska, for 70% of the product output for a 15 year period. Signed December 5, 1979, the sales agreement includes a proposed products slate of approximately 80% fuels and 20% chemicals. Although the sales agreement is not yet binding, it would appear to indicate Alpetco's intention to market fuels on a longterm basis.

THE COMMITTEE FINDS that despite Alpetco's earlier claims to strong interest by Japanese trading companies and government leaders, and by major U.S. chemical companies, the sales agreement with its own majority partner, Charter/Alaska, represents its own firm marketing activity.

Jobs and Revenues

In 1978 Alpetco repeatedly stated that Alaska would receive between 1,925 and 2,850 permanent jobs during the project's 20 year operations phase. Alpetco stated that the number of jobs created was a direct result of the project being a petrochemicals facility rather than a simpler refinery. Today, Alpetco officials indicate that the number of definite, permanent jobs is 579. Additional jobs might be created if the project moves beyond phase one.

In 1978 Alpetco stated that its annual taxes would provide a total of $49 million in revenues to the State and the local government. In 1980 the annual revenues to the State and local government appear to be about $22.9 million, less than half that estimated in 1978. In part, the reduction in revenue would appear to be the result of the shift in the proposed size of the project from a $2.5 billion facility to a $1.5-1.7 billion facility.

THE COMMITTEE FINDS that the number of jobs for Alaskans has become one-quarter of that promised in 1978, while tax revenues have dropped to less than half of that promised in 1978. FURTHER, the shift in project ownership from an Alaska incorporated firm to a business incorporated in Florida may further impact the total amount of Alaskan revenues.

ISSUE 3: SUBSTANTIAL DOUBT EXISTS AS TO THE DEGREE WITH WHICH ALPETCO HAS COMPLIED WITH ITS CONTRACTUAL OBLIGATIONS, SPECIFICALLY THOSE UNDER ART. 10.2.3, THE 18 MONTH BENCHMARKS, AND ART. 4.2.1, REASONABLE DILIGENCE

Benchmark 10.2.3(a). Provision (a) calls for Alpetco to expend or commit to expend or cause contractually bound third parties to expend or commit to expend at least ten million dollars in total project costs. By contractual amendment, "commit to expend" means contractually binding agreements, contracts and purchase orders. Alpetco submitted a summary schedule showing project expenditures and contractual commitments for a total of $11,377,229.98. The expenditures were reviewed by Peat, Marwick and Mitchell and approved. In a December 3, 1979, letter to the Department of Natural Resources, however, Peat, Marwick, Mitchell stated, "Because the above procedures were not sufficient to constitute an examination in accordance with generally accepted auditing standards, we do not express an opinion on any of the individual amounts referred to above." Although there appears to be little doubt that the company has complied with benchmark (a), Commissioner LeResche, contract administrator for the State, was unable to state what standards or criteria were used by the accounting firm to review the submittal as it did not use "generally accepted auditing standards."



AGO 559776

THE COMMITTEE FINDS that a more prudent course of action would have been for the Commissioner to require the accounting firm to conduct an examination of Alpetco's expenditures in accordance with generally accepted auditing standards.

Benchmarks 10.2.3 (b) and 10.2.3 (c). Provision (b) requires Alpetco to negotiate sale terms with prospective purchasers of products from the petrochemical facility; delineate product requirements, production ratios and quantities for the range of products to be produced from the petrochemical facility; and draft contracts for the sale of products from the petrochemical facility. Provision (c) requires Alpetco to enter into contracts for the sale of at least 70% of the product output from the petrochemical facility.

To meet provision (b) Alpetco submitted a products slate delineating the range of products, based on process optimization and market analysis. The December products slate was subsequently revised in an April 9, 1980, letter to the Commissioner. Alpetco did not submit draft contracts for the sale of products or material relating to negotiations of sale terms with prospective purchasers, contending that the sales agreement submitted under (c) met the benchmark (b) requirement.

To meet the contractual obligation under (c), Alpetco submitted a 15 year product sales agreement between Alpetco and Charter/Alaska for 70% of the product output, as it is described in the sales agreement. At the time the agreement was executed, Charter/Alaska was a 70% partner in the Alpetco Company.

Commissioner LeResche testified that the purpose of (b) was to determine market design three or four years ahead of the completion of the facility to see what markets would be in terms of products and product ratios, and, secondly, to demonstrate marketability for what Alpetco had decided to produce.

The intent of provision (c) was not only to demonstrate marketability, but, more specifically, to provide guarantees for longterm lenders. In its 1978 testimony and subsequent submissions to the State, Alpetco reiterated the necessity and its intent of selling products on longterm take-or-pay contracts with major chemical companies. Alpetco explained that the product sales agreement was tied to longterm financing in that irrevocable take-or-pay contracts would be used as guarantees for project financing, providing assurance to lenders that monies borrowed to finance the project would be promptly repaid. At a minimum, Alpetco said, the take-or-pay contracts would provide for debt service if for some reason the facility does not produce products for delivery to purchasers.

THE COMMITTEE FINDS that (b) and (c) are distinct. As the attorney for the State wrote[1], "In order to avoid reading (b) as wholly redundant with (c) and (h), it seems likely that

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1. Memorandum from Fred Boness, Attorney at Law, to Commissioner Robert LeResche, Department of Natural Resources, November 13, 1979, p. 13.

(b) requires Buyer to negotiate with prospective purchasers of products for the 30% of the products not sold in satisfaction of (c) -- assuming, of course, Buyer concludes contracts for only 70% of its products." Therefore, under (b) Alpetco should have submitted draft contracts for the remaining 30% of the products not sold under (c). These draft contracts assume greater importance in view of Alpetco's failure to sell 70% of the products to an unassociated firm.

FURTHER, at this time, Alpetco's plans for marketing the remaining 30% of the products remain unknown. Although Alpetco officials testified that they are in sales negotiations, their monthly progress reports indicate no marketing activity since the signing of the sales agreement with Charter/Alaska.

FURTHER, Alpetco officials testified that during the interim period, each of the partners is responsible for the disposition of its pro-rata share of royalty crude rather than the joint venture assuming that responsibility.

FURTHER, the Committee finds that Alpetco's sales agreement with its own majority partner is not as strong an indication of product marketability as would have been possible through sale to a totally unassociated firm.

FURTHER, the sales agreement is with a company, Charter/Alaska, whose stated capital assets are $1,000 (Certificate of Authority To Transact Business in Alaska, No. 13, issued January 17, 1980, by the Alaska Department of Commerce and Economic Development).

FURTHER, the sales agreement between Alpetco and Charter/Alaska is not a binding, irrevocable document. It is conditional on Charter/Alaska's "final approval of definitive documents relative to long-term loans of funds for the Refinery, the Terminal and related facilities and to the execution by December 18, 1980, of such documents by Alpetco and the lenders providing such funds" (Sales Agreement, p. 13). That is, the sales agreement is not being used as a guarantee for project financing, as was originally contemplated, but is itself dependent on project financing being established.

Benchmark 10.2.3(d). Provision (d) requires Alpetco to obtain or cause contractually bound third parties to obtain written commitments to lend or invest at least $1.5 billion in the project. Alpetco reported this requirement had been met in the following ways:

(1) authorization to issue $600 million in tax exempt industrial revenue bonds by the City of Valdez with the proceeds to be loaned to Alpetco; the bonds are to be underwritten by E.F. Hutton, subject to a number of conditions;

(2) a proposal by Thyssen Theinstahl Technik "to arrange financing" of up to $750 million in consideration for Thyssen, along with Foster Wheeler Energy Corporation, receiving an engineering and construction contract for the project; and



AGO 559780

(3) equity financing by the partners of $350 million, with each partner responsible for a pro-rata share of the funds. Taken as a whole, the intent of provision (d), along with provision (e) for interim financing, is clearly to substantiate the project's creditworthiness and financial feasibility, by documenting the firm commitment of lenders or investors. In evaluating Alpetco's actions regarding benchmark (d), it would appear that the State should concern itself that the commitments are, indeed, firm commitments and that the lenders and the borrower are each serious about the loan. An indication of that seriousness would be that the commitments are binding contracts, not merely expressions of interest.

The Valdez Bond.

A review of the Valdez bonding proposal shows it to be highly conditioned, including a provision that E.F. Hutton will undertake to buy and reoffer the bonds only if the bonds receive an investment grade rating by Standard and Poor's Corporation. Another condition is that E.F. Hutton's obligation is subject to a subsequent agreement by Alpetco to maturity schedules, interest rates and other terms.

Alpetco officials' testimony substantiated that the Thyssen arrangement contains no terms, no drawdown schedule, no interest rate, no security provisions. Considerable discussion during the public hearings centered on the fact that the Thyssen agreement is not to lend or invest, but to arrange financing. The following April 28th exchange between Rep. Joe McKinnon and Mr. Willard Hanzlik, financial advisor to Alpetco, exemplifies the discussion:

> Rep. McKinnon: If last December 18th you had gone to Commissioner LeResche and said the financing we've arranged is $600 million in bonds from the City of Valdez and we've got $350 million in equity and we intend to go out during the next year and arrange an additional 750 million dollars worth of loans, would that have met the benchmark?
>
> Mr. Hanzlik: No.
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> Rep. McKinnon: And you're contending that by contractually obligating somebody to do what wouldn't have met the benchmark if you yourself had done it, you've met the benchmark.
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> Mr. Hanzlik: Exactly. Sure.
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> Rep. McKinnon: I don't see the logic there.



AGO 559783

THE COMMITTEE FINDS that it,too, does not see the logic. A commitment by Thyssen to arrange financing in no way obligates Thyssen to lend or invest in the project. Hence, a substantial cloud exists over whether Alpetco has complied, in fact, with benchmark 10.2.3(d).

FURTHER the Committee finds it difficult to understand how Alpetco finds Thyssen's commitment, such as it is, better than that of other investors in that there are no terms. The lack of specificity of terms also greatly lessens the possibility that a court would find the agreement legally binding on Thyssen.

FURTHER the Committee finds that the Thyssen arrangement fails to meet the intent of provision (d), to demonstrate the project's financial feasibility by December 18, 1979.

The Partners Equity Investment.

As of December 13, 1979, the three partners had agreed to commit $350 million in funds to the project. Charter/Alaska was to commit $245 million; Alaska Petrochemical Company, $81.9 million; and E.F. Hutton/Alaska, $23 million, each based on their pro-rata share of the joint venture. No letters of commitment were included from any of the six regional native corporations. Each company's commitment was subject to the company and the respective parent companies approving the final definitive loan documents and to those documents being executed by December 18, 1980.

At the May 8, 1980, hearing, Commissioner LeResche indicated that Charter/Alaska would assume the obligations of Alaska Interstate after that company's sudden withdrawal from the joint venture. Charter's obligation for equity investment now totals 84.7% or $296.45 million, plus backup for Seatrain's $23.1 million.

THE COMMITTEE FINDS that, in light of the sudden withdrawal of Alaska Interstate, a review of the remaining companies' financial capacity and ability to meet the equity investment commitment would be in order.

FURTHER, under Art. 4.2.1 calling for reasonable diligence, the Commissioner should review the new joint venture agreement to ascertain anew the extent to which the remaining partners and their respective parent companies remain committed to the project and to the equity investment commitment.

Benchmark 10.2.3(e). Provision (e) calls for Alpetco to obtain a commitment or commitments for interim financing for the construction of the petrochemical facility. To meet this requirement, Alpetco submitted letters from two banks, Chemical Bank of New York and Manufacturers Hanover Trust. The two letters were subject to a number of conditions, including a review of the economic projections and underlying assumptions which demonstrate the viability of the project.

Alpetco also indicated that it might provide for interim financing through use of an early issue of the tax exempt Valdez bonds. It further indicated the partners might determine to contribute the total equity required during the early months of construction, thus eliminating the need for interim construction financing. It subsequently also obtained a letter from Thyssen committing Thyssen "to arrange interim financing" for up to $150 million if the banks do not provide the funds.

THE COMMITTEE FINDS that the commitments for interim financing provided by the banks to be expressions of interest, not contractually binding agreements. As submitted, the banks' letters do not offer any protection to the State as far as actual performance goes.

FURTHER the Committee finds that the backup commitments for interim financing to be provided by Thyssen or by an early issue of the Valdez bonds or by the partners are of the caliber and quality of their comparative commitments for longterm financing under provision (d).

FURTHER the Committee finds that the materials submitted by Alpetco for compliance with provision (e) do not meet the intent of the benchmark -- to demonstrate lenders and investors confidence in the project's economic feasibility.



AGO 559786

Benchmark 10.2.3 (f). Provision (f) requires Alpetco to complete and file an Environmental Impact Assessment on the petrochemical facility. A draft Environmental Impact Statement was published December 7, 1979, and a final EIS published April 25, 1980.

THE COMMITTEE FINDS that Alpetco has complied fully with provision (f).

FURTHER the Committee finds that, according to testimony offered by staff and administration officials, Alpetco's EIS is exemplary.

Benchmark 10.2.3 (g). Provision (g) requires Alpetco to complete and file all material state, local and federal permit applications.

THE COMMITTEE FINDS that Alpetco has complied fully with provision (g).

FURTHER the Committee finds that, according to testimony offered by staff and administration officials, that Alpetco's permitting procedures have been exemplary.

Benchmark 10.2.3 (h). Provision (h) states that Alpetco must "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)."



AGO 559787

To indicate its compliance with this benchmark, Alpetco submitted a general summary of work done on plant design and process optimization, and detailed engineering studies by UOP Process Division, C-E Lummus Company, R.M. Parsons Company, Heat Research Corporation and Exxon Research and Engineering Company. The Department of Natural Resources employed Pace Company to review the documents, and Pace reported that the overall process configuration for the facility had been determined. The optimization work and the process engineering are sufficient, Pace indicated, for a cost estimate to be prepared with a variance of 15 percent or less. At the two public hearings, the Committee received conflicting, or at least confusing testimony about (h). Alpetco officials testified that they did not submit a definitive cost estimate to Commissioner LeResche, while Commissioner LeResche testified that they did. Both Alpetco officials and Commissioner LeResche testified that such a definitive cost estimate was, in any case, irrelevant.

THE COMMITTEE FINDS that the lack of a definitive cost estimate is far from irrelevant. At best, the difference in opinion about the relevancy of a definitive cost estimate indicates a substantial ambiguity in contractual language.

FURTHER the Committee finds that clearly Alpetco no longer plans to construct the $2.5 billion project originally described in 1978, a change which adversely impacts the amount of state and local revenues the project will generate.

FURTHER the Committee finds that the Commissioner's approval of the benchmark without administrative review of the definitive cost estimate substantially reduces the validity of the benchmark as a check on contractual progress. Alpetco is contractually obligated to spend a total of $1.5 billion by the 72th month; the longterm financing for the $1.5 billion has to be in place by December 18, 1980. It is the understanding of the Committee that longterm commitments by major investors often depend on adequate preparation of engineering design and cost estimates. Yet Alpetco officials testified that, at this time, they do not have cost estimates in hand with which they would approach prospective lenders.

ISSUE 4: THE ECONOMIC FEASIBILITY OF THE ALPETCO PROJECT REMAINS UNDEMONSTRATED, AND THE RECENT, SUDDEN WITHDRAWAL OF ALASKA INTERSTATE COMPANY INCREASES DOUBTS AS TO THE PROJECT'S LONGTERM ECONOMIC VIABILITY

Much of the material presented under the discussion of Issue 2 (Alpetco's compliance with contractual obligations) is pertinent to a discussion of the project's economic viability. Indicators of the project's inability to demonstrate adequate financial feasibility and to find solid favor with potential investors and backers include the following:

·the withdrawal of Alaska Interstate with no apparent compensation for an equity investment of about $5 million dollars;

·the venture's inability to establish firm markets with anyone other than its own majority partner;

AGO 559789

·Alpetco's inability to execute longterm take-or-pay contracts to use as guarantees for project financing;

·the substantial doubt as to the extent and firmness of commitments to lend or invest at least $1.5 billion in the project;and

·the similar state of interim financing commitments.

ISSUE 5: THE STATE RISKS NOT RECEIVING FULL VALUE, WISE DEVELOPMENT AND ASSOCIATED BENEFITS FROM THE IN-KIND USE OF ROYALTY OIL IF ALPETCO TAKES INTERIM ROYALTY CRUDE BEGINNING JULY 18, 1980

In 1978 Alpetco pledged that its contract would present little or no risks to the State of Alaska. In a more cautious vein, Commissioner LeResche testified on March 14, 1978, "There are risks inherent. I submit that these risks are very minimal compared to the extreme benefits that are possible under this contract." Among the risks LeResche outlined were added administrative burdens for the State, litigation of the storage question, and loss of the option to do other things with royalty oil in the period between the approval of the contract and the following 18 months. He also discussed future risks possible under Arts. 2.3 and 2.4, the option terms.

The 1980 testimony and record, however, raise several areas which deserve examination in terms of the potential risks the State now faces. In particular, Alpetco's desire to take Alaska royalty crude on an interim basis, beginning July 18, 1980, prior to facility construction and operation raises questions.

On a practical level, the lifting of 150,000 barrels per day of oil from the Valdez terminal requires Alpetco to make arrangements for the actual physical transfer of the oil. On April 28, 1980, Alpetco general manager Dudley Parker testified, "We have not made tanker arrangements, to be honest with you." Nor had Alpetco made firm arrangements to exchange or otherwise sell or dispose of the oil at that time. They also indicated that each partner in the joint venture is making separate arrangements for the disposal of its pro rata share of interim crude. On May 8, 1980, Commissioner LeResche testified that he had no information as to how E.F. Hutton/Alaska, Seatrain or the six native regional corporations plan to dispose of their respective shares.

In order to qualify for early taking of royalty crude, Alpetco must have "actually expended at least $100 million in Total Project Costs," not including the price of the royalty oil itself. As of April 30, according to Alpetco's statements to Commissioner LeResche, they had spent a total of $16,813,731. The Commissioner had not received a final list of how Alpetco plans to spend the remaining $83 million, although Alpetco indicated that the list would be submitted by mid-May. Alpetco testified on April 28 that they will expend the $100 million by June 30.



AGO 559791

As of May 8, the Commissioner had not defined how he would evaluate "an actual expenditure" nor the timeline for evaluating Alpetco's compliance with the requirement to actually expend the funds prior to receipt of royalty crude. He stated, "The fact is, the problem with that coming in as an amendment with no timeframe is that they could on June 18 not have made a hundred million dollar expenditure but make it by July 18 and still arguably have a call on the oil because all that had to do was precede by one microsecond their taking the oil...."

Discussion at the May 8th hearing also substantiated that the case between the State and North Slope oil producers over royalty cleaning costs is still unresolved ("Amerada Hess v. State of Alaska"), and that the April 9, 1979, memorandum of decision and order by Judge Allen T. Compton has not yet been entered as a final order.

THE COMMITTEE FINDS that Alpetco has failed to make firm arrangements for royalty oil transfer and transport less than forty days from the required date of notification for tendering space on the Trans-Alaska pipeline and less than eighty days from the actual transfer of oil.

FURTHER, the Administration lacks any information as to the plans of the minority partners of the joint venture for disposition of their shares of the royalty oil.



AGO 559792

FURTHER the Committee recognizes that the State has provided a backup in the event of Alpetco's failure to take crude oil as scheduled. The backup is in the form of the current royalty oil contract between the State and Tesoro Petroleum which calls for Tesoro to take delivery of royalty crude July 18, if Alpetco should not, and to continue receipt for a period of time up to December 31, 1980.

FURTHER, the Committee finds that delivery of royalty oil to Alpetco for export from the State from July 18, 1980, through 1983 precludes the use of the oil for established instate refiners with current crude supply deficits.

FURTHER, the Committee finds that lack of an established administrative timeline for evaluation of Alpetco's compliance with the $100 million expenditure requirement may lead to a situation where Alpetco can receive royalty crude prior to the Administration's verification of the Company's compliance with its contractual obligation.

FURTHER, the Committee finds that the lack of resolution of the current litigation between the State and North Slope producers over royalty oil leaves open the question of whether the State will receive at least the equivalent of the invalue price for royalty oil taken in kind.



AGO 559793

FURTHER, the Committee finds some indications that once Alpetco receives royalty oil, it has a continued claim on that oil for a period of time, even in the event that it does not complete and operate a petrochemical facility. Under this circumstance, Commissioner LeResche testified, Alpetco would pay the State the going price for the oil. The Commissioner's assessment, however, ignores the fact that the State expects to receive more for its royalty oil taken in kind than simply its monetary value. Continued export of royalty oil forecloses instate options for instate refining, processing, marketing and distribution of products.

FURTHER, the Committee finds that allowing Alpetco to take delivery of royalty crude on July 18, 1980, legitimizes Alpetco's claim to the oil, despite the substantial doubts that exist as to Alpetco's compliance with its contractual obligations. Hence, early delivery of royalty crude to Alpetco is unacceptable.

FURTHER, the Committee finds that the Commissioner has chosen to administer the contract in a negligent and imprudent manner, increasing the risks to the State that Alpetco will not fulfill properly its contractual obligations. The Committee finds this level of administrative watchfulness unacceptable and, accordingly, will continue to exercise an ongoing role of close legislative oversight.



AGO 559794

Submitted as a public report this 15th day of May, 1980.

Bill Miles
Co-Chairman

Mike Colletta
Co-Chairman



AGO 559795

HOUSE RESEARCH AGENCY
Pouch Y - State Capitol
Juneau, Alaska 99811
4653991

MEMORANDUM

February 20, 1980

TO: Representative Bill Miles

FROM: Susan Brody, Issues Analyst SB

RE: Alpetco Contract Compliance, 18 Month Benchmark Request #31

INTRODUCTION

This memorandum is in response to your request for an evaluation of compliance with the Royalty Oil Contract, specifically the 18 month benchmark provisions of Article 10.2 (3). These provisions are listed below.

(a) Expend or commit to expend or cause contractually bound third parties to expend or commit to expend at least $10 million in total project costs.

(b) Negotiate sale terms with prospective purchasers of products from the petrochemical facility; delineate product requirements, production ratios and quantities for the range of products to be produced from the petrochemical facility; and draft contracts for the sale of products from the petrochemical facility.

(c) Enter into contracts for the sale of at least 70 percent of the product output from the petrochemical facility.

(d) Obtain or cause contractually bound third parties to obtain written commitments to lend or invest at least $1.5 billion in the aggregate for payment of total project costs.

(e) Obtain a commitment or commitments for interim financing for the construction of the petrochemical facility.

(f) Complete and file an Environmental Impact Assessment on the petrochemical facility.

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

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

According to the contract, these requirements are to be met within 18 months after the effective date, or by December 18, 1979. It is important to note, however, that the contract allows the Commissioner of Natural Resources to extend the 18 month benchmark period by 6 months. Therefore, the contract does give the State the option of requesting further clarification or documentation on any of the contract items, (a) through (h), before making the final determination that Alaska Petrochemical Company has complied with Article 10.2 (3).

Alaska Petrochemical Company submitted evidence of contract compliance to the State on the following dates: November 19, December 5, 13, and 17, 1979. Following a December 5 meeting in Juneau between the Alaska Petrochemical Company, Commissioner Bob LeResche and Attorney Fred Boness, the State requested further documentation on several contract items. Alaska Petrochemical Company submitted revised documents on December 13 at which time a second meeting was held in Seattle. This last meeting resulted in one final request by the Department of Natural Resources for clarification of the information submitted and Alaska Petrochemical Company transmitted this additional documentation to the State on December 17.

Responsibility for evaluating the Article 10.2 (3) contract items was shared within the Department of Natural Resources by the Division of Minerals and Energy Management (DMEM) and the Commissioner's office. DMEM was responsible for evaluating Alaska Petrochemical Company's compliance with items (a), (b), (g), and (h). They hired two consulting firms to assist them in this effort: the Pace Company and Peat, Marwick, and Mitchell. The Commissioner's Office evaluated items (c), (d) and (e) with assistance from Attorney Fred Boness and Peter Lewis, financial consultant.

Tom Cook, Director of DMEM, transmitted his Division's finding in writing to Commissioner LeResche by memorandum on December 18, 1979. However, as far as we can determine, no written findings were prepared by the Commissioner's office evaluating Alaska Petrochemical Company's compliance with contract items (c), (d) and (e). According to Kay Brown, Special Assistant to the Commissioner, both Fred Boness and Peter Lewis were recently requested by LeResche to prepare written findings on the contract items they reviewed and these should be available through the Commissioner's office in about 2 weeks.

In our review of the documents submitted to the State by Alaska Petrochemical Company, we have identified a number of areas where contract compliance could legitimately be questioned. However, the extent to which evidence submitted by the Company is interpreted as satisfying the terms of the contract depends, in part, on the evaluator's perspective. For this reason, we felt it would be valuable to familiarize ourselves with the original concerns of the legislature in regard to the Royalty Oil Contract and to determine what purposes certain contract provisions were intended to serve. Our review of previous documents included the March 1978 transcripts of hearings before the House Royalty Oil and Gas Committee and the final Committee report of April 28, 1978.

It is interesting to note that the House Committee anticipated possible problems with contract compliance and enforcement. The April '78 Committee Report notes:

> In the short-term, it is unlikely the State will be inclined to enforce the letter of the performance benchmarks set out in the contract. Assuming Alaska Petrochemical Company will demonstrate substantial commitment and sincere effort, it may not be realistic to expect that the State will cut Alaska Petrochemical Company off if it falls short of the desired goals.

One of the key concerns of the Committee was a provision in the contract which determines when the Alaska Petrochemical Company may begin receiving oil from the State. Article 2.2 provides that after the Buyer has "obtained the financing commitment referred to in Article 10.2 (3) (d) and has furnished satisfactory evidence of same to Seller, Buyer shall have the right ... to call for the initiation of delivery of crude oil under this agreement." Thus the 18 month benchmark provisions of the contract, especially item (d) are extremely critical because they determine whether Alaska Petrochemical Company will be allowed to receive the State's royalty oil prior to construction of the petrochemical facility.

The Committee was also concerned that sufficent markets might not exist for the products of the proposed petrochemical facility. Specifically, the Committee found that "there is little potential for product purchase in Japan; there is more of a potential on the West Coast and other lower 48 markets, but Mexican petrochemicals may preclude such prospects." Items 10.2 (3) (b) and (c) of the contract address the need for Alaska Petrochemical Company to provide evidence of product marketability. Subpart (b) requires the Alaska Petrochemical Company to "negotiate sales terms with prospective purchasers of products" and to "draft contracts for the sale of the products"; subpart (c) requires Alaska Petrochemical Company to "enter into contracts for the sale of at least 70 percent of the product output."

Another issue in the Committee hearings was an absence in the contract of any firm requirements for in-State processing of the oil. In an attempt to reassure the House Committee on this point, Eddie Rogers, the chief contract negotiator for Alaska Petrochemical Company testified that by meeting the benchmark criteria of Article 10.2, the Company would be demonstrating its intent to process in-State and to process the full 150,000 bpd. Again, this demonstrates the importance of the benchmark requirements of Article 10. They are the primary mechanism for insuring that risks to the State are minimized.

CONTRACT REQUIREMENTS

(a) Expend or Commit to Expend or Cause Contractually Bound Third Parties to Expend at Least $10 Million in Total Project Costs

On December 5, 1979, Alaska Petrochemical Company submitted a summary schedule showing total project cost expenditures of $10,632,217 and contractual commitments of $745,012 for a total of $11,377,229.

The Division of Minerals and Energy Management contracted with Peat, Marwick, Mitchell and Company, certified public accountants, to audit the Company's records to assure that the requirement had been met. In a letter dated December 3, 1979, Peat, Marwick, Mitchell reported that "in connection with the procedures referred to above, no matters came to our attention that caused us to believe that the total project costs reported by the Company should be adjusted."

This review of the Alaska Petrochemical Company's accounts by a reputable accounting firm appears to us as adequate evidence of compliance with Article 10.2 (3)(a).

(b) Negotiate Sale Terms With Prospective Purchasers of Product Requirements, Production Ratios and Quantitites for the Range of Products to be Produced from the Petrochemical Facility; and Draft Contracts for the Sale of Products from the Petrochemical Facility

On December 5, 1979, Alaska Petrochemical Company submitted a schedule identifying the range of product output for Stage I of project development, including the projected 1985 demand for the products and the percent of the total demand that the Company anticipates that it will supply. Less detailed information on products to be produced was submitted for Stages II and III of project development.

The Division of Minerals and Energy Management contracted with the Pace Company of Houston, Texas to evaluate Alpetco's submittal on this part of Article 10.2 (3)(b). In a letter dated December 12, 1979, the Pace Company noted that, "We have reviewed the data submitted by Alpetco to the State of Alaska describing the range of output for the product slate, and the data appear to be consistent with the processing configuration chosen for the refinery."

In light of the Pace Company's findings, we believe that this requirement of (b) has been substantially satisfied. However, in regard to the other two requirements of contract provision 10.2 (3)(b), the Alaska Petrochemical Company did not submit evidence of "negotiated sales terms" or "draft contracts." Instead, the Company referred to its executed product sales contract with Charter Oil (Alaska), Inc. as evidence of compliance with the provisions of (b). The sales contract with Charter Oil (Alaska), Inc. was submitted in fulfillment of 10.2 (3)(c) and is discussed in the following section.

(c) Enter into Contracts for the Sale of At Least 70 Percent of the Product Output from the Petrochemical Facility

To satisfy this benchmark requirement and the requirements of Article 10.2 (3)(b), Alaska Petrochemical Company submitted a product sales contract between the Alpetco Company* and Charter Oil (Alaska), Inc. for 70 percent of the products from the facility. The Alpetco Company is a joint venture of three entities: the Alaska Petrochemical Company (23.4 percent interest), Charter Oil (Alaska),Inc. (70 percent interest), and E. F. Hutton (Alaska), Inc. (6.6 percent). In other words, a 70 percent partner in the petrochemical facility project has agreed to purchase 70 percent of the products from that facility.

The product sales contract appears to satisfy the letter of 10.2 (3)(c). It is a valid and meaningful contract that guarantees that the Alpetco Company will receive payment for 70 percent of its products. While it may not be an "arms length" contract, it is a contract between two distinct entities. On the other hand, the product sales contract does little to demonstrate the actual marketability of the products of the petrochemical facility. Charter Oil (Alaska), Inc. will still need to identify viable markets for the products it has agreed to purchase from the Alpetco Company.

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* Alaska Petrochemical Company has requested that their royalty oil contract with the State be assigned to the Alpetco Company, a joint venture formed October 1, 1979. To the best of our knowledge, Commissioner LeResche has approved the assignment.

As noted earlier, the product sales contract was also submitted as evidence of compliance with the terms of 10.2 (3)(b); that is, as satisfying the requirement to "negotiate sales terms with prospective purchasers" and to "draft contracts for the sale of products." However, if both the requirements of (b) and (c) were included in the Royalty Oil contract, it seems reasonable to assume that the parties to the contract contemplated (b) and (c) as independent conditions. It may be helpful to consider the probable purpose of the (b) requirements in determining whether the spirit as well as the letter of the contract has been met. That purpose was probably to insure that progress was being made toward sale of 100 percent of the products and to provide some evidence of the market viability of the project. This purpose does not appear to have been met by the contract between the Alpetco Company and Charter Oil (Alaska), Inc.

The only additional documents submitted by the Alaska Petrochemical Company to demonstrate interest in the products of the facility were letters from four chemical companies: Dow Chemical, USS Chemical, Mitsui, and Mitsubishi. These letters contain expressions of general interest in the products, but do not represent evidence of negotiated sales terms or draft contracts.

Our preliminary conclusions regarding contract terms 10.2 (3) (b) and (c) are as follows:

* It is questionable whether the product sales contract between the Alpetco Company and Charter Oil (Alaska), Inc. fully satisfies the letter of requirement (b).

* It appears that the product sales contract does satisfy the letter of requirement (c).

* The product sales contract falls short of satisfying the spirit of both (b) and (c).

(d) Obtain or Cause Contractually Bound Third Parties to Obtain Written Commitments to Lend or Invest At Least $1.5 Billion in the Aggregate for Payment of Total Project Costs

The Alaska Petrochemical Company submitted evidence of three separate financing arrangements to demonstrate compliance with this benchmark requirement. These include:

| | |
|---|---|
| * Thyssen Rheinstahl Technik GMBH | $750 million |
| * City of Valdez | $600 million |
| * The Alpetco Company Partners | $350 million |

The evidence submitted for each party is summarized on the following pages.

Thyssen

On December 7, 1979, Thyssen Rheinstahl Technik GMBH, a West German firm, wrote a letter to the Alpetco Company stating the following:

> We hereby commit to arrange financing of up to $750 million ...to cover cost for the engineering, equipment, materials, construction and other services required for the project. (emphasis added)

K W Thyssen and Foster Wheeler Energy Corporation (a joint venture) is currently under contract to the Alpetco Company to provide engineering services for the petrochemical facility, including an agreement to propose a fixed price for construction by September 1, 1980.

The commitment to arrange financing for the project is subject to the following conditions: 1) that the Alpetco Company acquires or contributes the other $750 million; 2) that the Alpetco Company obtain all necessary permits and approvals and begin taking crude no later than July 18, 1980; 3) that definitive documents relating to long term financing for the project be executed by December 18, 1980 (the 30 month benchmark requirement). Thyssen also provided a "character reference" from the Deutche Bank and on December 21, 1979, sent a supplemental letter to Commissioner LeResche giving examples of three other projects for which it had arranged financing in amounts of over $100 million. In this same letter, Thyssen emphasized that their commitment to the Alpetco project is more substantial than is customarily given on comparable projects at this stage.

The Thyssen letter appears to be an enforceable commitment to "arrange financing" for the petrochemical project. However, Article 10.2 (3)(d) requires the Alaska Petrochemical Company (or contractually bound third parties) to obtain "written commitments to lend or invest." It appears to us that one could legitimately argue that the commitment to arrange financing is not a commitment to lend or invest.

Valdez

On November 19, 1979, the City of Valdez passed an ordinance authorizing issuance of tax exempt industrial revenue bonds to finance the petrochemical facility. A resolution authorizing the mayor to execute a commitment to lend $600 million to the Alpetco Company from the sale of these bonds was passed the same day. The mayor subsequently transmitted a letter of commitment to the Alpetco Company to loan up to $600 million or more. In addition, E. F. Hutton and Co., Inc. wrote a letter to the Mayor of Valdez on November 19, 1979, confirming their commitment to purchase the Valdez bonds subject to a number of conditions.

Several questions about the validity of the Valdez commitment have been raised by Joe La Rocca and others. The two primary concerns are whether the bonds can legally be issued with a tax exempt status and whether the Valdez bond issue and commitment violate AS 37.10.085 (prohibiting the loan of municipal credit to a private corporation).

According to Attorney Fred Boness, a prominent Seattle bond counsel has answered the tax exempt question favorably citing Article 103 (b) (4) of the IRS tax code. That section of the tax code specifically allows tax exempt bond issues for the financing of airports, docks, wharves, sewage or solid waste disposal facilities, air or water pollution control facilities, and several other purposes. The City of Valdez resolution authorizing the commitment of funds to the petrochemical facility clearly states that those funds are to be used for the purposes specified in the IRS Code.

The question as to whether the Valdez commitment violates AS 37.10.085 appears to be easily answered. A 1970 State Supreme Court opinion (Wright v. City of Palmer, 468 p 2d 364) and two legal opinions submitted by the Alpetco Company all support the view that the Valdez bond arrangement is valid under Alaska statutes.

Alpetco Company Partners

On December 13, 1979, the three partners in the Alpetco Company wrote letters committing the following amounts of equity to the project.

| | |
|---|---|
| Charter Oil (Alaska), Inc. | $245 million |
| Alaska Petrochemical Company | $81.9 million |
| E. F. Hutton (Alaska), Inc. | $23.1 million |

The above amounts are available on 30 day notice subject to final approval of definitive documents for long term financing of the project by December 18, 1980.

Overall, the terms of Article 10.2 (3)(d) appear to have been partially met. Approximately one-half of the required $1.5 billion in project financing has been committed by the City of Valdez and the Alpetco Company partners in a manner that appears to be valid and binding. However, Thyssen's commitment for the other $750 million in financing is not a true commitment to lend or invest as required by the language of the contract and we, therefore, question whether Article 10.2 (3)(d) has been fully satisfied.

(e) Obtain a Commitment or Commitments for Interim Financing of the Petrochemical Facility

According to the projections of Alaska Petrochemical Company, $92.5 million will be required for interim construction financing. To substantiate its fulfillment of this benchmark requirement, Alaska Petrochemical Company submitted evidence of a number of possible options for interim financing. These include letters of commitment from two banks, an agreement from the City of Valdez to cover some of the interim financing needs through the sale of tax exempt bonds and a commitment to arrange interim financing from Thyssen Rheinstahl Technik.

In its submittal to Commissioner LeResche on December 13, 1979, Alaska Petrochemical Company indicated that although they 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."

Alaska Petrochemical Company submitted letters from two banks as evidence of commitments for interim financing. The letters came from Chemical Bank of New York and Manufacturers Hanover Trust Company, each offering a maximum of $75 million to finance the non-tax exempt costs of construction. Both banks' commitments for interim financing are subject to the following eight conditions.

1. Review of the economic projections and underlying assumptions which demonstrate the viability of the project.

2. Availability of guarantees and undertakings to assure completion of the project and coverage of any cost overruns.

3. Continuance of the Royalty Oil Contract and assurance that petroleum reserves available to Alaska Petrochemical Company are adequate to support all project financing.

4. The final contract of the Alpetco Company joint venture agreement.

5. Availability of sufficient equity to complete the project through the sale of royalty crude oil or otherwise.

6. Sufficient collateral and undertakings to assure repayment of the construction loans.

7. Availability from responsible lenders or permanent financing sufficient to provide a complete "take out" for the interim financing.

8. Commitment from the other bank to provide a similar amount of financing.

The agreements to provide interim financing are also subject to "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...as may be relevant in the circumstances."

In light of the many specific and general conditions, neither bank letter would satisfy a strict interpretation of the meaning of Article 10.2 (3)(e). However, the proposal to use proceeds from the Valdez tax exempt revenue bonds for interim financing appears sound, especially if these funds are used for construction of the tax exempt costs outlined in the IRS regulations (103(b)(4)). Finally, the offer by Thyssen Rheinstahl Technik for interim financing is again a commitment to arrange interim financing rather than a commitment for interim financing and thus does not represent an entirely satisfactory fulfillment of the contract requirements.

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

The environmental impact assessment was officially filed with DNR on November 19, 1979. Glenn Akins of the Department of Environmental Conservation acted as State coordinator for the EIS work and a number of other State agencies were involved throughout the preparation of the assessment.

(g) Complete and File All State, Local and Federal Permit Applications

On November 19, 1979, the Alaska Petrochemical Company furnished the Division of Minerals and Energy Management with a list of names and telephone numbers for all government agencies that were required to receive a permit and copies of all permit applications filed. The Division contacted the agencies by phone and confirmed that all had been filed.

(h) Complete Plant Design and Optimization Necessary to Obtain a Definitive Project Cost Estimate (Meaning a Cost Estimate Containing No More Than 15 Percent Variance in Anticipated Costs)

In support of compliance with this benchmark, the Alaska Petrochemical Company submitted a letter describing in general the work completed on plant design and eleven volumes of engineering design, optimization studies and reports prepared by the Company's engineers and consultants.

The State Division of Minerals and Energy Management contracted with the Pace Company of Houston, Texas, to analyze the evidence submitted. In their December 12 letter to DMEM, the Pace Company noted:

> As a result of these optimization studies, the overall process configuration for the refinery and petrochemical complex has been determined. The optimization work and the process engineering performed by various licensors and engineering firms for the project are sufficient for a cost estimate to be prepared with a variance of 15 percent or less.

In light of the Pace Company analysis, it appears to us that the terms of Article 10.2(3)(h) have been met. We do not have the expertise to perform an independent evaluation of the engineering studies and other data submitted in support of this benchmark requirement.

CONCLUSIONS

Our review of the evidence submitted by the Alaska Petrochemical Company indicates that contract items (a), (f), (g) and (h) of Article 10.2(3) have been fully met. However, it appears that terms of contract items (b), (c), (d) and (e) may have been satisified only in part.

To meet the requirements of (b) and (c), Alaska Petrochemical Company submitted a sales contract between the Alpetco Company and Charter Oil (Alaska) Inc. for 70 percent of the products from the petrochemical facility. Although this appears to satisfy the letter of (c) and, to a lesser extent, of (b), we question whether this provides adequate evidence of product marketability.

Article 10.2(3) (d) which requires commitments for at least $1.5 billion in project financing is the most critical of the benchmark provisions. The terms of (d) have been partially met by the commitments of the City of Valdez and the Alpetco Company partners, but the Thyssen Rheinstahl Technik commitment for $750 million in financing may not be a true commitment to lend or invest as required by the language of the contract.

Finally, Article 10.2(3)(e) requires commitments for interim financing. The Alaska Petrochemical Company offered several alternatives for accomplishing this benchmark. However, the letters from the Chemical Bank of New York and Manufacturers Hanover Trust Company are subject to so many conditions that, in effect, they do not appear to provide a substantial guarantee of interim financing.

SB/dp

cc: Representative Malone

# ALASKA STATE LEGISLATURE - HOUSE OF REPRESENTATIVES

REPRESENTATIVE JOE McKINNON
POUCH V, JUNEAU, ALASKA 99811

April 28, 1980

M E M O R A N D U M

TO: Joe McKinnon

FROM: James Grandjean JG

RE: Alpetco Contract

The question addressed in this memorandum is whether or not Alpetco has complied with Section 10.2(3)(d) of its contract with the State. This provision provides, in substance, that the contract is terminated unless, within 18 months of the effective date (i.e., by December 18, 1979) Alpetco shall

> "[o]btain or cause contractually bound third parties to obtain written commitments to lend or invest at least One Billion Five Hundred Million ($1,500,000,000.00) in the aggregate for payment of Total Project Cost."

Alpetco proposes to meet this provision through (a) the issuance of $600 million in tax exempt revenue bonds by the City of Valdez to be loaned to Alpetco; (b) a purported commitment by Thyssen to "arrange for" $750 million in additional financing; and (c) $350 million in direct financing by the member companies of the Alpetco consortium. Since the commitments by the Alpetco members are conditioned upon the other financing, the focus of this memorandum is on items (a) and (b) above.

In my view, a defensable argument that Alpetco's performance complies with Paragraph 10.2(3)(d) cannot be made. The manifest purpose and effect of subsection (d) is that Alpetco must, to retain its rights under the contract, obtain commitments from lenders or investors by December 18, 1979 that demonstrate the financial feasibility of the project. It can meet its obligations in one of two ways: through a commitment directly from the lender or investor to lend or invest the requisite amount, or through a commitment made to a "contractually bound" finder on behalf of Alpetco by the lender or investor.

The Bonding Proposal. The $600 million bond issue to be made by the City of Valdez is to be underwritten by E.F. Hutton & Company. Obviously, until the bonds are in fact offered for sale and purchased, or commitments to purchase them have been made, there are no "commitments to lend or invest" within any possible interpretation of Subsection (d). Although the arrangement contemplates a purchase by E.F. Hutton of the bond issue, and a subsequent reoffering by Hutton of the bonds to the public, Hutton's committment to purchase the bonds likewise does not suffice to comply with Subsection (d).

The terms of the undertaking by Hutton are set out in its letter of November 19, 1979 to Mayor Walker. Condition five to Hutton's undertaking is that the bonds receive a Standard & Poor's "investment grade rating". An investment grade rating will be issued by Standard & Poor's only in the event that it determines that the prospective revenues from the project will be sufficient to repay the bond holders, and Hutton's commitment is therefore, in effect, that it will purchase the bonds only if there is a public market for the bonds, which has not yet been determined.

Accordingly, the situation is no different, in substance, than if Alpetco were now proposing to float the bonds itself it an attempt to raise the necessary revenue, since the terms of the bonds provide that they will be paid for only out of the revenues of the project. Thus, there is no "commitment" on the part of Hutton to purchase the bonds and, in reality, Alpetco has produced nothing more than an offer to attempt to sell bonds.

Condition seven of Hutton's undertaking provides that its obligation is subject to an agreement by Alpetco to "maturity schedules, interest rates and other terms which are commercially reasonable given all the facts and circumstances prevailing at the time the Bonds are available for reoffering." [Emphasis added]. In other words, any obligation on Hutton's part to purchase the bonds would arise only at the time that Hutton attempted to reoffer them to the public, and only to the extent that Alpetco agrees to terms that are satisfactory to Hutton at that time, given the financial soundness of the project. Not only does this condition impose a conceptually impossible term, i.e., that the purchase price of the bonds is to be determined after their purchase, but it effectively permits Hutton to opt out of the entire arrangement by permitting it to impose onerous and impossible terms upon their purchase in the event that the project appears to be a high risk one. Thus, Hutton's "commitment" at this time can hardly be regarded as evidence of the project's financial feasibility or an assurance that Alpetco has the necessary financing to carry it through.

Finally, the second paragraph of Hutton's "committment" letter provides that the price of the bonds to be paid by Hutton to the city of Valdez, and the price at which they

will be reoffered to the public, as well as other essential terms such as maturity dates, "will be fixed and agreed upon between E.F. Hutton and [Alpetco] at such times as the bonds are available for reoffering" and that the material terms will be subject to approval by the city. Once again, this provision obviously gives both the City of Valdez and E.F. Hutton the practical ability to opt out of the arrangement at any time, and negates any intention that the arrangement constitutes "commitments to lend or invest".

Moreover, the Hutton/Valdez arrangement is not an orthodox one. Normally, an underwriter agrees to purchase bonds and takes its chances on its ability to resell them on the open market, which it will hopefully do at a profit to itself. The arrangement contemplated in this case hedges Hutton's obligation to purchase the bonds and conditions it, for all practical purposes, upon a market for reoffering them, and pegs the terms of its purchase of the bonds upon market conditions that prevail at the time of reoffering.

In effect, Hutton's status as an underwriter, aside from administrative matters, does little or nothing to differentiate this arrangement from one in which the bonds were offered directly by Alpetco and/or the City of Valdez to the public. Therefore, since it is far from clear that the public will purchase the bonds, the arrangement cannot reasonably be regarded as a commitment to lend or invest at the present time.

The Thyssen Proposal. The second major component of Alpetco's purported compliance with the 1.5 billion dollar financing benchmark is its arrangement with Thyssen. Thyssen is a German corporation that is primarily in the construction business and which Alpetco expects to build the facility if it is built. Thyssen's "commitment" is set out in a letter dated December 7, 1979 to Alpetco, and a telegram dated December 17, 1979 that amplifies the December 7th letter. The letter provides that Thyssen does thereby "commit to arrange financing up to" $750 million subject to Alpetco's acquisition of an additional $750 million in financing. Definitive agreements for the financing "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 telegram substantially restates the above terms insofar as permanent financing is concerned.

On its face, this undertaking by Thyssen does not purport to be a commitment by it to lend or invest, nor a commitment by a third party to Thyssen to lend or invest to Alpetco. Clearly, Alpetco could not satisfy the requirement that it obtain a commitment to loan it money through a statement

that it would later arrange for a loan. By the same token, it cannot satisfy the requirement through a statement by a third party that it will later obtain a loan for Alpetco. In either case, the requirement is satisfied if, and only if, a commitment to loan money is made on or before the benchmark date -- December 18, 1979.

Moreover, even the limited undertaking by Thyssen to arrange for financing through some other party is subject to the prior requirement that the balance of the 1.5 billion dollars be committed. Since this obligation is conditioned upon an event that has not occurred, it cannot logically be argued that its own "commitment" was made on or before the effective date, albeit that the "commitment" would not satisfy the requirement of Subsection (d) in any event.

Even if it could somehow be argued that even though Alpetco has not obtained a commitment to lend to or invest money in its project, it has nevertheless, by virtue of its arrangement with Thyssen, "cause[d] contractually bound third parties to obtain written commitments to lend or invest...." Clearly, the obvious import of this language is that the "contractually bound" third party must obtain the commitment within the benchmark period, not that it merely have undertaken to do so within the benchmark period.

However, even if an agreement with a third party made within the allowable time period to obtain a loan commitment after the deadline is sufficient, it is probable that Thyssen is not "contractually bound" to do so, since the essential terms and conditions of the loan, including interest rate, repayment schedule, security, and all of the ordinary and customary provisions of a loan agreement are not set out in Thyssen's letter. This fact caused Mr. Bonness to conclude that the "lack of specificity most likely would result in a court concluding the commitment is not enforceable against Thyssen." See page 9 of the memorandum to Commissioner LeResche dated February 21, 1980. Consequently, the Thyssen arrangement is deficient under subsection (d) in two respects, and it is highly questionable whether Thyssen is a "contractually bound" third party, even if the nature of its undertaking is otherwise sufficient.

Somehow, Mr. Bonness concluded that even though the undertaking of Thyssen was probably not enforceable, it was sufficient to comply with subsection (d). Insofar as the nature, as opposed to the enforceability, of Thyssen's undertaking is concerned, Mr. Bonness stated only that

> "I believe that a commitment 'to arrange' is satisfaction of Alpetco's requirement 'to obtain' if the commitment is otherwise adequate. It is not surprising to find a lead company willing to take on the obligation to come up with the financing without knowing a year in advance exactly who will provide the funds."

With all due respect, for the reasons set out above, I think this conclusion is erroneous. A "commitment" by a construction company of undetermined financial position to "arrange" that another party make a loan on unspecified terms, a "commitment" which is in itself of dubious enforceability, can hardly be equated with a commitment by a lender to lend money. The fact that Alpetco is having difficulty in obtaining financing and does not know at this point who its ultimate lenders will be (if any can be found) does not detract from this conclusion.

The precise purpose of subsection (d) was to ensure that the State not be committed to the Alpetco project unless Alpetco could demonstrate its feasibility by obtaining the necessary financing commitments within the 18-month period designated. It would be an exercise in totally circular reasoning to conclude that Alpetco's inability to obtain the financing relieves it from the obligation to do so, and that it is therefore entitled to the fruits of the contract without performing its own obligation.

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May 20, 1980

Joint Gas Pipeline Committee,
Alaska State Legislature

Hon. Bill Miles, Co-Chairman
Hon. Terry Gardiner, Speaker of the House
c/o Legislative Affairs Agency
Pouch Y, State Capitol
Juneau, Alaska 99811

Gentlemen:

We transmit to you herewith the Memorandum called for by the Agreement between the Legislative Affairs Agency, on behalf of the Committee, and my firm.

In the enclosed Memorandum, we have discussed and rendered our opinions as to whether ALPETCO has been and is now in compliance with its Royalty Oil Contract with the State of Alaska, and whether the determination of the Commissioner of Natural Resources to that effect may be judicially reviewed.

We hope that you will find our analysis useful and responsive to your inquiry; and we remain ready to respond to any further or additional inquiries that you may have.

We are pleased to have been able to be of service.

Yours truly,

ERIC L. KEISMAN

ELK:rd
Enclosure

AGO 559812

MEMORANDUM May 19, 1980

TO: Joint Gas Pipeline Committee Of
The Alaska State Legislature

REP. Bill Miles, Co-Chairman
REP. Terry Gardiner, Speaker Of The House

FROM: Eric L. Keisman
For Wolf Popper Ross Wolf & Jones

## I. Introduction

This Memorandum is in response to your request that we review and express our opinion as to certain questions arising under an agreement between the State of Alaska and The Alpetco Company, ("ALPETCO") entitled "Agreement for the Sale and Purchase of State Royalty Oil," executed February 22, 1978 ("the Royalty Oil Contract"). This contract, originally entered into between the Alaska Petrochemical Company ("Alaska Petrochemical") and the State, was amended on May 17, 1978 and thereafter approved by the required concurrent resolution of the Alaska State Legislature, as of June 18, 1978.

In essence, the Royalty Oil Contract provides for the sale and purchase of certain crude oil received in kind by the State as royalty under other agreements and leases, and for the construction and operation in Alaska, by the purchaser, of a "petrochemical manufacturing and fuels refining facility...with capacity to process at least 150,000 barrels of crude oil per day," (Art. 4.2.1).

On or about December 13, 1979, Alaska Petrochemical, Charter Oil (Alaska), Inc. ("Charter") and E.F. Hutton (Alaska), Inc. ("Hutton") entered into the "Alpetco Joint Venture Agreement," creating The ALPETCO Company ("ALPETCO"). On December 13, 1979, Alaska Petrochemical assigned its interest in the Royalty Oil Contract to ALPETCO. The assignment was accepted on behalf of the State by the Commissioner of Natural Resources ("the Commissioner").

In order to ensure full and timely compliance by ALPETCO of its obligation to construct and operate the "Petrochemical Facility" required by Article 4.2.1, it was required, by Article 10.2, to achieve particular items of progress by particular times after the Effective Date. Article 10.2 provides that the "Agreement shall terminate upon failure of Buyer [ALPETCO] to take each and every one" of the specified actions "within the time specified for each...."

In stated demonstration of its compliance with the provisions of Article 10.2(3) ("the Eighteen Month Benchmarks"), ALPETCO made certain submissions in writing, to the Commissioner, on December 13, 1979; and, after a meeting on that date, made supplemental submissions on December 17, 1979.

On December 18, 1979, the Commissioner, stating that he was unable to determine whether or not there had been compliance with Article 10.2(3), wrote to ALPETCO granting it a six-month extension of time to comply, as permitted by the last sentence of that provision. (Letter, Commissioner LeResche to Gordon Cain, Dec. 18, 1979). However, on February 9, 1980, on the basis of the submissions made to him on or before December 18, 1979, the Commissioner again wrote to ALPETCO, declaring that he he had found it to be in full compliance with all provisions of Article 10.2(3). Earlier, on December 27, 1979, Governor Jay Hammond had announced his conclusion that ALPETCO had complied with that Article. Nonetheless, on April 28, 1980, the Commissioner again wrote to ALPETCO that certain matters had come to his attention that made it questionable whether it had been,or was, in compliance with the Eighteen Month Benchmarks.

At the time it made its submissions regarding compliance with Article 10.2(3), ALPETCO also gave notice that it was calling for initiation of delivery crude oil, pursuant to the provisions of Article 2.2, as amended. That Article allows such a call for delivery, prior to commencement of operation of the Petrochemical Facility, after ALPETCO "has obtained the financing commitment referred to in Article 10.2(3)(d) and has furnished satisfactory evidence of same to" the State, but also provides that it shall not be entitled to such delivery until it has "actually expended at least $100 million in Total Project Costs" and "at least twenty-five (25) months have passed since the Effective Date."

We have been requested to discuss and express our opinion as to:

(1) Whether ALPETCO has been, and is now in compliance with the Royalty Oil Contract; and

(2) Whether there are grounds for objection to the determination by the Commissioner that ALPETCO was, and is in compliance with that contract.

Our consideration of these issues focuses on ALPETCO's asserted compliance with Article 10.2(3); although certain of the issues discussed also bear on possible breach of other provisions, and on ALPETCO's satisfaction of the prerequisites to its entitlement under Article 2.2 to call for the initiative of delivery of oil.

In connection with this matter, we have reviewed all written materials submitted to us, including the Royalty Oil Contract, its amendments and the Legislative approval resolution; the ALPETCO Joint Venture Agreement; the written submissions of ALPETCO to the Commissioner under letters of December 13, 1979 and December 17, 1979, including all enclosures; transcripts of hearings before cognizant committees of the Legislature in March 1978 and in April 1980; ALPETCO's "Updated and Revised proposal of February 7, 1978; ALPETCO's publication entitled "Petrochemicals in Alaska -- The ALPETCO Story", dated March 15, 1980; the House Royalty Oil Committee Report, dated as of April 27, 1978; various memoranda of consultants and staff prepared for or submitted to the cognizant committees; legal memoranda prepared for the Commissioner by Frederick Boness, Esq., dated November 9, 1979 and February 21, 1980; a legal memorandum prepared for the Joint Gas Pipeline Committee by John M. Davis, Esq., dated April 23, 1980; an opinion letter of Lazard, Freres & Co., to the Commissioner, dated March 20, 1980; and miscellaneous background materials.

We understand it to be desired that we consider the issues in the light of a possible judicial, as well as legislative, determination; and have done so. It should be recognized that, while we consider our conclusions fully supported by the facts known to us, and the applicable law, our opinions cannot be taken as a firm prediction of the outcome of a possible judicial proceeding.

II. Has ALPETCO Compiled With Article 10.2(3) Of The Royalty Oil Contract?

It is our view that a strong and correct case exists that ALPETCO has not compiled with the provisions of Article 10.2(3), the "Eighteen Month Benchmark Provisions". This is so as to certain of the significant benchmarks aimed individually, and also, if they are considered collectively, as interrelated conditions. Article 10.2 appears to have been drawn to require ALPETCO to satisfy concerns of both the executive branch and the legislature as to the viability of the project and ALPETCO's ability to complete it. Thus, while a court might incline to find compliance on borderline facts as to a single condition, the converse could well be true if there was serious doubt on the record of compliance with several. A court should interpret provisions of this nature so as to give effect to their general purpose. 4 Williston, The Law of Contracts, § 619 (Third Ed. 1961).

A. Certain General Principles of Law.

The first frame of reference for testing ALPETCO's compliance with the benchmark provisions is, of course, the language of the Royalty Oil Contract itself. Cernohovsky v. Northern Liquid Gas Co., 68 N.W.2d 429 (Wis. 1955) ("The language of a contract must be understood to mean what it clearly expresses. A court may not depart from the plain meaning of a contract where it is free from ambiguity".) Were the language of the Royalty Oil Contract clear and unambiguous, that would end our inquiry as to meaning of the contract provisions, and all that would remain would be to test ALPETCO's performance against the meanings thus derived. However, certain of the provisions of Article 10.2(3) are not clear and unambiguous. By way of example, there is no single, clear legal meaning for such terms contained in Article 10.2(3)(d) and (e) as "commitment", "interim financing", or "written commitments to lend or invest". Similarly, Articles 10.2(3)(b) and (c) are not self-defining. A court will thus consider extrinsic evidence to determine the intent of the parties as to the meaning of such terms and provisions. Kincaid v. Kingham, 559 P.2d 1044 (Alaska 1977); Hendricks v. Knik Supply, Inc., 522 P.2d 543 (Alaska 1974). Probably the most significant extrinsic source, where it exists, is a contemporaneous statement by one of the parties to the

contract as to his understanding of its meaning -- see Port Valdez Co. v. City of Valdez, 437 P.2d 768 (Alaska 1968); Hendricks v. Knik Supply, Inc., supra, -- particularly where that contemporaneous statement is not contradicted by another party. In some instances, a statement by a party acknowledging his understanding of an obligation assumed by him is, in addition to being extrinsic evidence acceptable under the parol evidence rule, an admission -- and thus a very strong form of evidence. See Weinstein, Evidence (1979), ¶ 801 (d)(2)[01].

It should be noted, however, that parol evidence may not be introduced or considered to vary or to contradict the meaning of an agreement which is clear on its face. National Bank of Alaska v. J.B.L. & K of Alaska, Inc., 546 P.2d 579 (Alaska 1976).

Another source for the resolution of ambiguous terms in a contract is reference to the generally accepted meaning or meanings of such terms in the business or commercial community. See, Chase Manhattan Bank v. First Marion Bank, 437 F.2d 1040 (5th Cir. 1971). See also, National Bank of Alaska v. J.B.L. & K of Alaska, Inc., supra. This, however, is less weighty than more specific and objective expressions evidencing the nature of the agreement reached by the parties. 1 Corbin, Contracts, § 29 (1963) ("The parties may not give verbal expression to such vitally important matters as price, place and time of delivery, time of payment, amounts of goods, and yet they may actually have agreed upon them. This may be shown by their antecedent expressions, their past action and custom, and other circumstances"). See also Hendricks v. Knik Supply, Inc., supra, ("[Intent] may be ascertained from the language and conduct of the parties, the objects sought to be accomplished and the surrounding circumstances at the time the contract was negotiated"). Where such specific evidence is lacking and there are no easily applicable general commercial standards, the courts will inquire as to what one placed in the shoes of the parties would reasonably have expected the agreement to mean -- the courts thus preventing one party from insisting upon an interpretation that is, in the court's view, unreasonable. Restatement of Contracts, § 230 (1932), cited in National Bank of Alaska v. J.B.L. & K of Alaska, supra, at 584. Where,

however, the party to be charged has clearly expressed his understanding of his obligations, it is much less likely that the court will look to meanings wholly extrinsic to, and detached from, the particular contract or transaction at issue. See Weinstein, supra.

Thus, in considering whether ALPETCO has complied with the Eighteen Month Benchmark requirements, its own statements and representations to the Legislature, or other public statements, as to what it understood them to be, play an important role. In addition, substantial significance should be given to any expressions by the cognizant legislative authority as to its understanding, particularly to the extent that those were made to ALPETCO representatives, and apparently agreed to, prior to legislative approval of the agreement.

An additional general principle of contract law bears upon the matters to be discussed herein, particularly ALPETCO's compliance with the financial commitment requirements of subdivisions (d) and (e), referred to as "binding commitments" in Article 10.3. See Draper, The Broken Commitment: A Modern View of the Mortgage Lenders' Remedy, 59 Cornell L.R. 418 (1974); Leben v. Nassau Savings and Loan Association, 337 N.Y.S.2d 310 (A.D. 1972). For an agreement, whether described as a contract or a commitment, to be binding it must as a general matter, be complete as to all material terms. See, Alaska Creamery Products, Inc. v. Wells, 373 P.2d 505, 510 (Alaska 1962); Western Airlines, Inc. v. The Lathrop Company, 499 P.2d 1013 (Alaska 1972). On the other hand, an apparent incompleteness is not necessarily fatal to the binding character of an agreement. See, Corbin, supra, § 29. Where terms left for future settlement are within definite and proscribed limits, or where the content of an omitted term may be ascertained by reference to an extrinsic standard, (such as a price, to be determined by a pricing formula) many courts will uphold the contract, and, in effect, supply or imply the missing term. See, California Lettuce Growers v. Union Sugar Co., 289 P.2d 785 (Cal. 1955); Biothermal Process Corp. v. Cohu & Co., 119 N.Y.S.2d 158 (Sup.Ct. N.Y. 1953, affirmed in part and reversed in part 126 N.Y.S. 1 (A.D. 1953), aff'd, 124 N.E.2d 323, 308 N.Y. 689.

Where one party has already tendered partial performance, the courts have shown some reluctance to strike down a contract for indefiniteness, with the degree of such reluctance depending upon the extent of such performance or other action in reliance upon the purported agreement. See, Morris v. Ballard, 16 F.2d 175 (App.D.C. 1926). See also, Fontainebleau Hotel Corp. v. Crossman, 286 F.2d 926 (5th Cir. 1961).

On the other hand, where major premises of a complicated contract, such as a construction or land development contract have been omitted, the court have generally declined to supply the missing terms. See, Willowood Condominium Ass'n Inc. v. HNC RLTY Co., 531 F.2d 1249 (5th Cir. 1926); Western Homes, Inc. v. Herbert Ketell, Inc. 236 Cal.App.2d 142 (Cal. 1965).

As expressed by a California court, in the recent case of Metropolitan Water District of Southern California v. Marquardt, 379 P.2d 28 (Cal. 1963):

> "[t]"the question is one of degree. . . whether the indefinite promise is so essential to the bargain that inability to enforce that promise strictly according its terms would make unclear the enforcement of the remainder of the agreement . . . each party may be required to accept a reasonable determination of the unsettled points, or, if possible, the unsettled point may be left unperformed and the remainder of the contract enforced."

On the whole, the authorities seem relatively clear that a court will not supply the bulk of the essential terms of an agreement; nor will it construe as a binding contract something which is no more than a memorandum evidencing an intention to arrive at a formal contract in the future. Alaska Creamery Products, Inc. v. Wells, 373 P.2d 505 (Alaska 1962). Further, where a contract is too vague, indefinite, or incomplete, many

courts have described it as an illusory agreement, or an agreement to agree; which are simply additional verbal formulations for the proposition that no contract has been arrived at. Western Airlines v. Lathrop Company, 499 P.2d 1013 (Alaska 1972).

B. Background: Purpose Of The Eighteen Month Benchmarks.

The meaning of the provisions of Article 10.2(3), and therefore the determination whether they have been complied with, will almost surely be sought by a court with reference to the expressed purposes for the inclusion of that Article in the agreement. From all of the materials we have reviewed, two separate but closely related purposes clearly appear. ALPETCO was required to show compliance with these benchmarks in order to demonstrate the credit worthiness and financial viability of the total project as well as to demonstrate that there was in fact a vi able market for the products to be produced by the petrochemical facility to be constructed.

It is clear that in determining to sell its royalty oil, a primary desire on the part of the State of Alaska was to obtain something more than a purchase agreement. Several proposals for agreements to purchase the royalty oil were submitted to the State by various entities; but ALPETCO was chosen, in essence, because it was willing to undertake to build a substantial petrochemical manufacturing facility in Alaska and to operate that facility during the period of the royalty oil agreement. This was recognized and emphasized by ALPETCO in, inter alia, its February 7 1978 "Update and Restatement of ... October 15, 1977 Proposal For The Purchase of Alaska State Royalty Crude Oil And Construction Of A Petrochemical Facility In Alaska" (hereafter, "February 7, 1978 Proposal").

For example, ALPETCO emphasizes that its proposal ensures that it "does not purchase any royalty oil until the petrochemical project is put together with sales contracts and construction financing in place." (¶ 1, emphasis added). Further, there are lengthy discussions of

the demand for petrochemicals, ALPETCO's petrochemical marketing plan, possible participation by major chemical companies, Japanese markets for petrochemical products, and alternate configurations for a petrochemical facility. In those discussions, ALPETCO represented that its analysis showed that:

> "An Alaska project using royalty crude oil as its principal feedback looks more economically attractive the more high value added products are produced. Accordingly, ALPETCO focused its efforts on production and market cases which would primarily produce high value-added petrochemical products." (February 7, 1978 Proposal, pp. 13-14) (emphasis added).

Manifestly, these assurances and reassurances were in reaction to the strong expressed doubts of responsible officials and legislators as to the viability of the ALPETCO proposal. For example, the House Royalty Oil And Gas Committee Report (House Journal Supplement, April 27, 1978), concluded, with respect to the economic feasibility of the ALPETCO project, that it could not overcome the "general economic disadvantage of Alaskan enterprise. . ." (p. 5). The Committee pointed out that all of its consultants unanimously disagreed with ALPETCO's optimistic outlook. It warned that, in order to maintain economic viability and overcome this disadvantage, a reduction in the price of the crude oil feedstock for the ALPETCO facility was likely; and characterized such a price reduction as "intolerable in light of forecasted high cost of crude coupled with its world-wide depletion in the future." (at pp. 6, 7)

The Comittee also expressed substantial doubt as to the market potential of Alaska-manufactured petrochemical products, due to existing crude oil surpluses on the West Coast of the United States, anticipated Mexican competition in that market, and an absence of real market potential in Japan. (House Report, pp. 7-9)

In view of these, and other doubts, the Committee unanimously recommended disapproval of the proposed ALPETCO contract.

The report of David M. Reaume to The Alaska Royalty Oil And Gas Development Advisory Board ("Reaume Report") is also illustrative. Among the pertinent passages of this report are the following:

> "There is substantial evidence available which makes questionable the project potential for a large scale refinery operation dependent upon an export market for a major porcion of its products. We are concerned that the threat of job loss and financial reversals may generate future political pressure aimed at maintaining an efficient refinery operation." (at p. 2)

* * *

> "While we have not had an opportunity to quantify the cost disadvantage of all Alaskan refined products on the West Coast and elsewhere it is possible to get a rough idea of the order of magnitude of the disadvantage. Niall Trimble, principal economist for the Department of Community And Regional Affairs has estimated the per barrel (of crude) disadvantage at between $1.42 and $2.13 per barrel (i.e., between $75 million and $115 million per year for a 150,000 BPD refinery). Even if this estimate was too high by a factor of 2.0 Alaska would still appear to face imposing barriers to the profitable operation of an export oriented refinery." (at p. 5)

The Reaume Report specifically denigrated the possibility of a profitable operation of a petrochemical facility in Alaska noting that:

> "The factors which dictate against the profitable operation of a petrochemical plant in Alaska include: (i) high construction costs, conservatively estimated at between 25% and 40% above Lower Forty Eight Costs; (ii) weakening world markets for petrochemicals; and (iii) the threat of uniform federal regulatory treatment of petroleum and gas, whether moving in interstate intrastate commerce.
>
> * * *
>
> "While the Alaska construction costs differential is a well accepted fact of life, the realization of the weak market outlook for petrochemicals and the difficulty of operating in Alaska has only recently begun to encroach upon the Alaskan conscious. Professional opinion on the subject is not seriously divided." (at p. 7)

This section of the Report concluded:

> "The weight of expert opinion clearly supports the notion that the petrochemical industry has entered a period of slower, more hesitant growth and that Alaska is not an economic location for petrochemical manufacturing." (at p. 10)

As is further reflected in the transcripts of the testimony before the Committee on March 14, March 18, and March 20, 1978, serious questions were raised with respect to ALPETCO's real commitment to build and operate the world-class petrochemical facility it had promised, and whether it could economically do so. Members of the legislature repeatedly raised that question, and the question

whether, and to what extent, ALPETCO was required to produce solid commitments for financing by Article 10.2 of the proposed contract. ALPETCO's Chairman, Mr. Honig, and its attorney, Mr. Rogers, took pains to assure the legislators that ALPETCO expected to be able to manufacture and market petrochemicals, such as would be produced by a "world scale heavily petrochemical refinery" (Transcript, March 20, 1978, at 22), and thus, in order to comply with the Eighteen Month Benchmarks, ALPETCO would have to have its long-term financing in place, in realistic terms. (March 18 transcript, at 8-10.)

The significance of the Eighteen Month Benchmarks in providing assurance that Alaska would get what it had bargained for is further highlighted by the relationship between Article 10.2(3) and Article 2.2, as amended by paragraph 3 of the amendments of May 17, 1978. Compliance -- and demonstration of compliance -- with the permanent financing commitment provision, Article 10.2(3)(d) is the trigger to ALPETCO's right to take delivery of royalty crude, combined with compliance with the Twenty-Four Month Benchmark requiring actual expenditures of $100,000,000 (Art. 10.2). Manifestly, the State desired a high level of assurance that the facility for which it had bargained would be financed and completed prior to the time when ALPETCO was permitted to purchase oil. All of these concerns, of course, are directly reflected in the benchmark requirements.

Particularly, demonstrations of product and marketability are required by subdivision (3)(d), dealing with the requirement for drafting and negotiating sales contracts, delineating produce configurations, etc.; as well as by subdivision (3)(c), calling for the conclusion of a contract for the sale of at least 70% of the production of the facility to be constructed. Demonstration that the proposed project could indeed be financed is required by the interim commitment requirement of subdivision (3)(e), as well as by the requirement for long term commitments of up to $1.5 billion provided in subdivision (3)(d).

After the agreement was executed by the Commissioner, and while seeking the required approval of the Legislature, ALPETCO issued further assurances, in its March 15, 1978 publication "Petrochemicals In Alaska -

The ALPETCO Story". As to the financial benchmarks, it said:

> "ALPETCO will not purchase royalty oil unless and until it has obtained financing commitments for $1.5 billion, which clearly indicates that the petrochemical facility will be built.
>
> * * *
>
> "ALPETCO and the State have agreed to performance bench marks which are designed to measure the progress made by ALPETCO in building the petrochemical facility. Failure by ALPETCO to attain each and every benchmark results in a right by the State to terminate ALPETCO's contract. . . . The 18 month check point. . . is the most important one. This is the 'go/no-go' benchmark. If ALPETCO is unable to put together the project by the 18 month benchmark, the State may terminate the contract." (at p. 12)

In short, by these and other statements in its March 15, 1978 publication, ALPETCO made plain that it understood what it was expected to demonstrate. That is, compliance with the Eighteen Month Benchmarks was to demonstrate to the State, with a rather high degree of certainty, that, in both marketing the financial terms, ALPETCO had the project "put together". There is a further significant underlying concept, reflected both in ALPETCO's submissions and in the benchmark requirements themselves. ALPETCO was to demonstrate the firm commitment of third parties to participate in the venture. It was not required or expected merely to reaffirm its own determination, intention, or internal capacity. While the benchmarks require ALPETCO to do certain things itself, including, e.g., the actual expenditure of $10 million; it is also required to obtain commitments from others with respect to interim and permanent financing. Similarly, it is manifest from subdivisions (b) and (c) that it was to demonstrate that it could market the products the petrochemical facility was to produce, and show how

it was going to do so. (See March 15, 1978 submission, pp. 5-9, with respect to marketing; and pp. 9 and 10 with respect to financing).

C. The Specific Benchmarks

1. The Financial Commitment Benchmarks

We believe that a strong case can be made that ALPETCO has failed to comply with the provisions of Article 10.2(3)(d) and (e), the financial commitment bench marks. Further, we believe it probable that a court would so find, upon a fair interpretation of the factual record which we have reviewed.

Interim Financing

The interim financial commitment benchmark is Article 10.2(3)(e), which requires that ALPETCO shall:

> "Obtain a commitment or commitments for interim financing for the construction of the Petrochemical Facility."

In purported compliance with that provision, ALPETCO has submitted the following:

(a) Letters of Manufacturers Hanover Trust Company, dated December 10, 1979, and Chemical Bank, dated December 11, 1979, by which each, in virtually identical language, confirms that it will participate "in the amount of $75 million in such a $150 million facility, subject to our satisfaction with" eight enumerated conditions. These include (1) each bank's review of economic projections and underlying assumptions demonstrating the "viability of the project"; (2) "availability of guarantees and undertakings from various parties" with respect to project completion, construction, and cost overruns; (3) continuance in effect of the royalty oil contract, continued fulfillment of all contractual agreements and obligations, and "assurance that the Alaska petroleum reserves available to ALPETCO" are "adequate to support all project financing"; (4) the "final written form of the ALPETCO joint venture agreement"; (5) availability to ALPETCO of sufficient equity to complete the project as presently

contemplated"; (6) "sufficient collateral and undertakings . . . to assure repayment"; (7) the "availability from responsible lenders" of "a complete takeout for the interim bank construction financing"; (8) and the commitment of the other bank involved. Even beyond these stated conditions, each letter makes the undertaking "subject to our satisfaction with the above requirements and with any other matters that may become relevant from a banking point of view. . . ."

(b) A "commitment to arrange interim financing" should the bank financing "fail to materialize", given by one of the proposed providers of permanent financing, Thyssen Rheninstahl Pechnik GMBH ("Thyssen"). (See pp. 16-17, infra.).

(c) A proposal, appended to its December 13, 1979 submission, that "up to $600 million in interim funds for construction costs for items qualifying for tax exempt financing will be provided by serialized takedown of" the tax exempt bonds which are proposed to be issued by the City of Valdez as part of the permanent financing for the project, pursuant to Article 10.2(3) (d). (See pp. 18, 21, infra.).

Whether any of these items satisfies, in full or in part, the interim financing commitment requirement turns largely on the meaning of the term "commitment". In the context of construction lending, that term may mean little more than an expression of interest, but it more often means a binding contract, subject only to certain clear and determined conditions. See, e.g., Presney, "Lender Procedures In Construction Loans", Advising Illinois Financial Institutions (Illinois Institute For Continuing Legal Education 1978), Ch. 10 (1978).

It is clear that ALPETCO was not expected to produce the actual construction loan agreements; these not being required until December 18, 1980 (Art. 10.2(5)). However, it is also clear that something more than an expression of interest, or an illusory commitment, was expected. As counsel for the Commissioner advised (Memorandum, Boness to LeResche, November 9, 1979), "a major concern for the State will be that the commitment is indeed a firm commitment." (at p. 16) Boness pointed out that

any such commitment would contain "certain basic elements" if it were to be judged legitimate. These would include the loan amounts, and indication whether secondary or contingency funds were to be available; drawdown schedules keyed to construction time tables; interest rates, terms and repayment schedules.

As Boness later, and we submit correctly, advised the Commissioner, the Chemical Bank and Manufacturers Hanover Trust letters fall so far short of the mark that they require little discussion. (Memorandum, Boness to LeResche, Feb. 21, 1980, p. 10). No term of the loan "commited" is spelled out, except its gross amount. These letters are little more than an indication that each bank will participate in a loan, all of whose terms are yet to be determined, if, in its discretion, it considers it advisable to do so at some later date. They offer no assurance to the State as to the very matters over which serious concern was expressed prior to execution and approval of the Royalty Oil Contract. Rather, they make it clear that each bank has not yet formed any opinion, as to the economic viability of the project. Further, quite beyond the broad specific conditions, or reservations, each bank requires that it be satisfied, in the future, as to "any other matters that may become relevant from a banking point of view".

While virtually all commitment letters contain a variety of conditions and escape clauses for the lender, these letters are so utterly wanting in terms and details that they do not even meet the degree of specificity customarily found in simple construction loan commitment agreements for residential construction. Compare, Presney, supra, at p. 10-49. It is thus very likely that a court would hold that these letters are not the commitments called for.

The Thyssen backup "commitment" was seemingly obtained after the Commissioner indicated dissatisfaction with the bank letters, although this is not perfectly clear. (Letter ALPETCO to LeResche, December 17, 1979, p. 1, ¶ 1). By this letter, ALPETCO transmitted Thyssen's revised commitment with respect to overall financing, as well as its new commitment "to arrange interim financing." As a "commitment", this undertaking by Thyssen suffers from all the infirmities of its commit-

ment with respect to long-term financing, discussed in the next section of this memorandum. In the context of the interim construction financing requirement there is an additional weakness. Art. 10.2(3)(e) requires ALPETCO itself to obtain the required interim financing commitment or commitments. By contrast, subsection (d) allows it to obtain the commitments required itself, or to cause "contractually bound third parties" to do so. Reading the two clauses together, it appears that under subdivision (e), ALPETCO was to obtain direct commitments from the lender or lenders, not the promise of a third party to obtain them.

Despite the "binding commitment language of Article 10.3, it has been suggested that the commitments called for by subdivision (e) were to be something less than a binding contract, because ALPETCO was not required to execute "definitive documents" until the 30-month point. However, the "definitive documents" provision (Article 10.2(5)(a)) refers only to the long-term loan of funds, and not to the "interim financing." It is the fact that construction lenders generally require that a commitment for permanent financing be obtained as a condition to closing the short term, or construction and development loan on a project. See, e.g., Draper, The Broken Commitment: A Modern View Of The Mortgage Lender's Remedy", 59 Cornell L.Rev. 418 (1974). However, this does not mean that the construction lender's commitment, though subject to that and other conditions, is not, customarily, a binding contract. Quite the contrary, as llustrated by numerous authorities enforcing or granting damages for breach of commitments to lend money, it is by far the more common practice, in modern transactions, to cast a construction lending commitment in the form of an enforceable contract. See, e.g., Walter E. Heller and Co. v. American Flyers Airline Corp., 459 F.2d 896 (2d Cir. 1972); Avalon Construction Corp. v. Kirch Holding Company, 256 N.Y. 137, 175 N.E. at 651 (1931). Similarly, where borrowers have reneged, it has been recognized that a lender may be entitled to retain a commitment fee as liquidated damages for the breach of a commitment to lend. See, e.g., Regional Enterprises Inc. v. Teachers Insurance And Annuity Association, 352 F.2d 768 (9th Cir. 1965); White Lakes Shopping Center, Inc., v. Jefferson Standard Life Insurance Co., 208 Kan. 121, 490 P.2d 609 (1971).

Thus, based on the apparently reasonable expectations of the parties, and on the customary meaning of commitment in the context of construction and mortgage lending, the stronger view is that the interim financing commitment required under subsection (e) is a commitment which is a legally binding contract -- even though possibly one subject to numerous, or even onerous conditions. Due to the absence of virtually all of the material terms required to make a promise into a contract, we believe that a court should find that Thyssen had not entered into such a commitment.

The third item in ALPETCO's submission regarding compliance with subsection (e) is its proposal to utilize the proceeds from the issuance by the City of Valdez of economic development bonds for construction costs for those items within the total project qualifying for tax exempt financing. (These are the same bonds which are to be part of the permanent financing required under subdivision (d). From our review of the materials submitted to us, it does appear that the parties had long contemplated the use of such economic development bonds as part of the lending or investment package required for the overall construction of the petrochemical facility. Further, we find no strong reason to question the opinion of Messrs. Kutak, Rock & Huie that the use of such bonds, with a serial takedown during construction, as well as for long term financing, is customary. Further, such use is clearly contemplated by the relevant City Ordinance (Ordinance No. 7917), by Resolution No. 7953, and by the letter of Mayor Walker to ALPETCO. The principal difficulty with this element of the construction financing, (apart from the weakness of the underwriting commitment which supports it, see pp. 29-30, infra.), is that it is limited to the acquisition, development and construction of so much of the facility as may be financed by tax exempt bonds. While we are acting neither as bond counsel, nor as tax counsel, it seems clear even from the Kutak, Rock & Huie opinion that the tax exempt bond proceeds may be used only to "finance a portion of the construction costs of ALPETCO's proposed refinery and related facilities...."

There thus appears to be a substantial gap in the interim financing package, a gap which ALPETCO has

recognized. In its December 13, 1979 submission immediately preceding the documents submitted relating to subdivision (e) compliance, ALPETCO states the intention to make equity capital contributions in place of some of the proposed interim financing.

This, in turn, raises another serious problem of contract compliance: the equity contribution proposal, the Thyssen "commitment to arrange" interim financing and, to a lesser degree, the proposed development bond utilization, could well be viewed by a court as an offer of "substituted performance" for the performance actually called for by the Royalty Oil Contract. Under some circumstances, such performance may be acceptable compliance with a contract; and a court would generally find it so where the party entitled to performance manifests acceptance. Here, however, the agreement required strict adherence at least to all material terms and conditions (Article 17). Article 22 provides that the contract,

> "...may be supplemented, amended or modified only by a written instrument duly executed by the parties...after proper authorization including approval by the Alaska Royglty Oil & Gas Development Advisory Board, and the Alaska State Legislature."

This procedure has plainly not occurred, whatever effect may be given to the Commissioner's letter of February 9, 1980. (See Part III, infra.).

There is thus a strong argument that ALPETCO's "substituted performance" does not comply with the terms of the Royalty Oil Contract but is rather an improper and ineffective attempt at amendment or modification of that Contract. The very purpose of subdivison (e) was to require a demonstration of the credit worthiness of the project. If the interim financing can be obtained only by equity capital contributions from ALPETCO itself, or from its constituent companies, this is a demonstration of quite the reverse. Further, the Thyssen backup "commitment to arrange" is quite at variance from the actual, direct commitment from a lender -- and does not appear contractually binding, on the basis of its great lack of completeness. The bond utilization concept, even to the extent it may

be valid, does not appear to be fully responsive to the requirements of subdivision (e), which can reasonably be held to call for separate interim financing. As to this last item, there is significant doubt, however. It is not clear from the text, as no precise dichotomy is drawn between interim and permanent financing. Subdivision (d) does not contain the term "permanent".

Thus, a court could determine that items submitted in satisfaction of subdivision (d) may also satisfy in part, subdivision (e). But there is also a strong argument that in order to give subdivision (e) some independent meaning, ALPETCO was required to demonstrate the availability of some separate interim construction lending. On balance, it is our opinion that it has not done so; and that a court giving due weight to the language and purposes of Article 10.2(3)(e) should find that ALPETCO has not complied, nor demonstrated compliance, with its provisions.

Total Project Cost Commitments

The overall financial commitment benchmarks is Article 10.2(3)(d), which requires that ALPETCO shall:

> "Obtain or cause contractually bound third parties to obtain written commitments to lend or invest at least one billion five hundred million ($1,500,000,000) in the aggregate for payment of Total Project Costs."

There are three separate components to the submission made by ALPETCO as compliance with this requirement:

(1) The Thyssen Component. The firm of Thyssen, Rheinstahl, Pechnik GMBH ("Thyssen") issued a commitment to ALPETCO "to arrange financing of up to US $750,000,000... to cover cost for the engineering, equipment, materials, construction and other services required for the project", subject to certain conditions, by letter dated December 7, 1979. This was supplemented, on December 17, 1979 by a telex, restating the commitment and withdrawing certain of the conditions. At the time of the original letter, there was submitted a letter of reference of the Deutsche Bank A.G., dated February 9, 1978, attesting to Thyssen's capacity in such projects, and declaring the bank's opinion that Thyssen was capable of accomplishing and financing "the projects it undertakes...." At the same time, ALPETCO

submitted a contract, of December 7, 1979, between ALPETCO on the one hand, and a joint venture found by Thyssen and the Foster Wheeler Energy Corporation, for the construction of the crude oil refinery and petrochemical facility. The latter contract is recited as the consideration for the Thyssen financing commitment.

(2) The City of Valdez Component. ALPETCO has submitted the commitment of the City of Valdez, Alaska, to issue up to $600 million in tax-exempt economic development bonds, the proceeds of such issue to be loaned to ALPETCO, pursuant to the terms of Ordinance No. 7917, of the City of Valdez, creating Article 2, Chapter 9 of the Valdez City Code, entitled "Economic Development Bonds." Pursuant to that ordinance, the City of Valdez further enacted Resolution No. 7953, providing for the issuance of such bonds. The Mayor of Valdez subsequently executed a commitment letter to "loan or otherwise provide up to $600 million or such additional amount as shall be deemed necessary...." Additionally, Hutton's parent company, the firm of E.F. Hutton, issued letters confirming "its commitment to purchase from the City of Valdez" economic development bonds in the amount of up to $600 million." Each of these, and particularly the E.F. Hutton letter, are subject to certain conditions which will be discussed below.

(3) The Equity Capital Component. The partners of ALPETCO -- Charter Oil, Alaska Petrochemical Hutton -- issued letters of commitment to provide "equity funds" in the gross amount of $350 million for payment of total project costs. These commitments were in turn confirmed by the letters of the companies which were in turn the parents and/or shareholders of each of the ALPETCO partners.

Particularly due to the weakness of the Thyssen component, there is a very strong argument that ALPETCO has not complied with the conditions of Article 10.2(3)(d). Under the Royalty Oil Contract, it is clear that by December 18, 1979, ALPETCO was to have obtained, or to have "caused contractually bound third parties to obtain," binding commitments to lend or invest the funds in question. By virtue of Article 10.3 of the Royalty Oil Contract, ALPETCO was to have the right to withdraw from the venture if, "after expending all reasonable efforts" it had failed to obtain:

> "...the necessary binding commitments from interim and permanent lenders for all the funds necessary to permit construction of the Petrochemical facility under a loan or loans providing for repayment of such loans during the life of this Agreement...."

We believe that the clear import of this provision is that it refers to the Eighteen Month Benchmark requirements. Had it been meant to refer to Article 10.2(5)(a) requiring ALPETCO to "execute definitive documents relating to the long term loan of funds", there would have been no reason for the use of the term "binding", or the term "commitment." It is clear from the scheme and order of Article 10.2 that "commitments" were to preceed the actual closing of loan, financing and investment agreements, the subject matter of the "definitive document" benchmark. The first question, then is whether Thyssen had entered into a binding commitment of any sort. We think it clear upon the face of the documentation, that Thyssen entered into a binding commitment of any sort. We think it clear upon the face of the documentation, that Thyssen had not contractually bound itself to lend or invest funds. There is no indication in the materials submitted to us, that it was ever contemplated that Thyssen itself be the lender, investor, or other provider of such funds. Rather, it has always been made plain by ALPETCO and its representatives that Thyssen was intended to obtain the funds elsewhere. Even before Thyssen became involved in the project, ALPETCO made it clear that it did not expect the prime contractor to self-finance the construction. In "Petrochemicals in Alaska", supra, it said:

> "The project will be financed by a combination of bank revolving credit, medium and long-term debt, both taxable and tax-exempt, supplier credits and foreign export bank financing. The long-term taxable debt will be supplied by private placement issues with major life insurance companies, pension and profit-sharing and retirement funds. The tax-exempt portion of the project, which could include as much as $350 million, will be placed with casualty insurance companies and commerical banks." (pp. 9-10)

That Thyssen itself was not conceived to be the lender, or investor, was made abundantly clear by ALPETCO's own counsel (Jim Frances) and its financial vice president, (Willard Hanzlik), in their testimony before the Joint Gas Pipeline Committee, on April 28, 1980. (Transcript, pp. 70-87). While this testimony is in many respects vague, if not confusing, it is clear that Thyssen intends to obtain the funds at issue through the use of export credits, originating with the governments of the various countries in which equipment, etc., may be purchased. These governments would guarantee loans to be made by lending commercial banks and other institutions. We thus believe that it is clear that Thyssen is not a party who has made a commitment to lend or invest. Rather, the clear import of Thyssen's commitment, and of the testimony is that Thyssen is, at best, a "third party" who was to obtain commitments to lend or invest. The next question, then, is whether Thyssen is in any sense contractually bound. If so, what was it contractually bound to have done by December 18, 1979?*

It can be strongly argued that Thyssen is not contractually bound to do anything. Parties may exchange promises, and fully intend to create a contract, and yet still fail to do so. See, generally, 1 Corbin, Contracts, § 29 (1963).

The Alaska law with respect to the enforceability of agreements appears to follow the law of other jurisdictions, including the major commercial states. In Alaska Cremerary Products, Inc. v. Wells, 373 P.2d 505 (Alaska 1962), the Court wrote:

> "Any contract to be enforceable must be reasonably definite and certain as to its terms. To be final, the agreement must extend to all the terms which the parties intend to introduce and material terms cannot be left for future settlement. Unless the court has before it ascertainable provisions of an agreement, there is no contract upon which it may act." (At 510)

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* Or, by the time the extension granted by the Commission was to expire.

In that case, the Court refused to enforce a purported contract for the sale of trucks, in the absence of an ascertainable terms with respect to the amount of the down payment, and the note to be given for the balance of the price. The transaction there was, of course, far more simple than the one involved in the present case. Thus, while the court indicated that it would be willing to imply "ascertainable provisions", even if there was some absence of precision and explicitness, it is difficult to see how a court could imply into the Thyssen commitment all of the terms that are omitted from it.

In Transamerica Equipment Leasing Corporation v. Union Bank, 526 F.2d 273 (9th Cir. 1970), the Court, apparently following California law, held a purported contract unenforceable where the parties had not resolved the question of which party would receive first payment from the oil wells which were to serve as loan security, the question of the method of payment of the proposed lending bank's fee, and the determination of a repayment schedule. See also, Willowood Condominium Ass'n, Inc., v. HNC RLTY Co., 531 F.2d 1249 (5th Cir. 1976).

In this instance, the only term of Thyssen's commitment which is specified beyond the conditions relieving it of the commitment, is the gross amount of the financing to be arranged. The commitment self contains no other substantive provision. Wholly absent are provision describing the ultimate source of funds; the type of financing; disbursement, take-down or repayment schedules; interest rate or rates (or standards for determining them), security provisions; or any other term or condition of what would necessarily be very complex commercial agreements. There are, of course, cases where, to save a contract it would be inequitable to strike down, a court has implied a missing contract term. Typically, these are transactions where the missing term may be easily ascertained, or implied, by reference to some extrinsic standard. For example, if, in a form residential mortgage, the lending bank has omitted the mortgage rate, a court could well imply that rate with reference to other residential mortgages issued by the same bank, or other banks in the community, during the same time period. See, Sintenis, "Current Treatment Of The Non-Refundable Commitment Fee and Related Problems," 86 Banking Law Journal, 590 (1969). But a court will not

write a contract for parties who have failed to do so. At most, it will uphold an incomplete contract when its incompleteness can be remedied with reference to an easily ascertainable extrinsic source -- whether generated by the parties, or by general commercial practice in the relevant industry. See also, 1 Corbin, supra, § 96. Thus, we think it extremely likely that an Alaskan court would determine that the Thyssen commitment is not a binding commitment.

The argument may be raised that a binding commitment was not required, since, as has been pointed out, the Alaskan courts would interpret a contract in the light of what is commercially reasonable under the circumstances. See, e.g., Day v. A & G Construction Co., Inc., 528 P.2d 440 (Sup.Ct. of Alaska, 1974). This, however, flies in the face of the "binding commitment" language of Article 10.3. The Day case does not say that the court will substitute what it considers reasonable for what the contract before it requires.

Further, if a court were to seek to give the Thyssen commitment some substantive content, so that it could consider whether that implied content satisfied the State's reasonable expectations, it would face great difficulties. As just shown, it is rather obvious that the term "arrange financing" has virtually no substantive content. There is little help in any of the extrinsic evidence. At most, a court might conclude that Thyssen was bound to use its best efforts to arrange viable financing. See, e.g., Wood v. Lucy, Lady Duff-Gordon, 222 N.Y 88 (1917). The implication of such a "best efforts" obligation would not satisfy the plain requirement of subdivision (d). Even if, by virtue of such a commitment, Thyssen has become the "contractually bound third party", the Royalty Oil Contract calls for it to have obtained, by December 18, 1979, "commitments to lend or invest." The record does not show that then, or now, Thyssen has obtained so much as a single actual commitment. In their testimony before the Joint Gas Pipeline Committee, ALPETCO's representatives have made that clear. For example, Mr. Hanzlik, dealing with the "export credit financing" which he admitted Thyssen was still in the process of arranging, testified:

> "I mentioned the term, 5 to 7 years, and the draw down of these instruments typically are in progress payments as required to supply the equipment. So beyond that, we can't be more specific because Thyssen doesn't know whether it is going to be buying specific items of equipment in France or in Japan or Germany or wherever. Once it determines these things, then the respective export agencies will come forward and those pieces will be put into the puzzle." (Transcript, April 28, 1980, p. 78).

Mr. Hanzlik then admitted that he could not yet say what countries, what commercial banks, and what suppliers of equipment might eventually be involved. Further, it appears from that testimony that the export credit financing will only be available for equipment purchases. We see no evidence as to who is expected to provide, and on what terms, the long term credit, or investment, for the remainder of the total project costs, except for those which may be satisfied out of the tax exempt bonds, or that may be provided by the equity investment. In short, as far as the records shows, Thyssen had neither commited itself, nor had it obtained commitments, by December 18, 1979 -- and there is no evidence that this has occurred to this date.

The best argument available to ALPETCO in response to this is that Thyssen's commitment, and its agreement to submit a fixed-price bid for the project, are a satisfactory substituted performance. At numerous points in the record, ALPETCO and its representatives stress the size, competency, and financial power of Thyssen, when asked to deal with the question of the validity of its commitment.

However, the Royalty Oil Contract itself does not call for such a performance; and, unless all parties to the contract lawfully and properly have accepted an offer of substituted performance, it is our opinion that such a offer does not cure the non-compliance with subdivision (d). While the Commissioner of Natural Resources, on February 9, 1980, purported to "find" that ALPETCO was

in compliance with all of the Eighteen Month Benchmarks, he purported to do so on the basis that they had actually been complied with, and not on the basis that he had accepted a substituted performance. Further, since any such substitution like, any other modification or amendment, would appear to require the approvals mandated by Article 22, it is difficult to see how the Commissioner had any power to accept a substituted performance.

Lastly, in terms of the purposes of the financing bench marks, the Thyssen commitment certainly provides no evidence of the willingness of third parties, particularly financial or other lending instiutions, to participate in financing the venture. At best, it provides an assurance that the general contractor, Thyssen/Foster Wheeler, will use its best efforts to make the project, which it desires to build, operative. Even that is a very qualified reassurance, in the light of the numerous conditions upon which Thyssen may withdraw.

The Valdez development bond component of ALPETCO's purported satisfaction of subdivision (d) is somewhat less subject to attack. Upon the materials we have reviewed, including the relevant Ordinance, Resolution, commitment letter of the City of Valdez, opinions of bond counsel, and the commitment of the proposed underwriter, E.F. Hutton, there is a likelihood that a court would find this portion of the financing commitment to be satisfactory. The use of tax exempt bonds as a portion of the overall financial package was in the contemplation of all parties from the early stages of the proceedings. During the 1978 hearings, there was clear testimony to that effect. See also, "ALPETCO in 1978 and ALPETCO in 1980: A Review", Joint Gas Pipeline Committee, April 28, 1980, p. 9. It may also be plausibly argued, that the definition of "Total Project Costs" in Article 1.13 implicitly recognizes the utilization of such a financing method. That Article does not in terms refer to the use of bonds, but does refer to expenditures or commitments for expenditures by "any city, borough or other governmental agency on any pollution control, sewage or water treatment, port, pipeline, terminal or other facilities, directly connected with or a part of the petrochemical facility, to the extent such facilities are utilized by the petrochemical facility." There is at

least an inference in this provision that tax exempt bond financing would be utilized, particularly if, as it appears to be the case, that would be the only practical way for a city or other unit to fund such expenditures.

However, there remain certain questions as to the validity of that commitment, in practical terms. We have seen no evidence that would indicate that the bonds could in fact be issued unless E.F. Hutton were to undertake their distribution. The Hutton commitment, as expressed in its letters of November 19 and November 21, 1979, is laden with conditions and cancellation rights, which create substantial risks that the purchase of the Valdez bonds by E.F. Hutton, and any syndicate it might form, may not take place. For example, the purchase and re-offering prices, maturities, and other material terms of the bonds are left open until the time of re-offering. Among the conditions so denominated, the requirement of condition (5) for the receipt from Standard & Poor's Corporation "of an investment grade rating on the bonds", and of condition (7) requiring ALPETCO to agree to commerically reasonable maturity schedules, interest rates, etc., create large areas of uncertainty. Moreover, Hutton has given itself the right to cancel its obligation if "any event shall have occurred which would adversely affect the business or earnings of the company or the feasibility of the project."

Thus, it cannot be said that the Valdez commitment, given the character of the E.F. Hutton commitment to repurchase, gives any major degree of reassurance to the State or Legislature that the issuance will actually take place upon terms and conditions rendering the entire project economically viable. In fact, the reservations thus expressed by Hutton seem to match the concerns which led to the insertion of the Eighteen Month Benchmarks. From this point of view, if the intent and purpose of Article 10.2(3)(d) alone were to govern, there would be a strong argument, because of the weakness of the Hutton commitment, that the Valdez commitment was also non-complying.

The difficulty with this argument arises from the usual nature of underwriting agreements. Particularly when dealing with a potential forfeiture, it appears, under such cases as the Day case, that an Alaska court will seek to place an "equitable" construction on the parties' expectations. This is the thrust of that line of Alaska authority which seeks to place a reasonable meaning, under the circumstances, upon contract language which may be ambiguously interpreted on its face. See, e.g., National Bank of Alaska v. J.B.L. & K of Alaska, Inc. 546 P.2d 579 (Alaska 1976).

If the parties contemplated the use of any publicly issued securities as part of the long term financing, then it is likely that, with regard to the question of the adequacy of an underwriting commitment issued by December 18, 1979, the court would necessarily look to the custom and usage of the financial community. It is the fact that fully binding, contractual underwriting agreements are not ordinarily given in advance, or far in advance, of the actual issuance of such securities. As one knowledgeable commentary puts it:

> "It is the unvarying practice of underwriters to delay the signing of the underwriting agreement... until only a few days (and frequently only a few hours) before the registration statement become effective...." (Wheat and Blackstone, "Guideposts for a First Public Offering, Business Financing (American Bar Association: 1963), at 57.

In effect, it is the custom of underwriters to refuse to be fully bound until just before the offering "goes effective." Even the final underwriting agreement, as described by Wheat & Blackstone, supra, generally includes most of the conditions and cancellation provisions contained in the Hutton commitment letters.

But the Hutton commitment may nonetheless be subject to attack due to its utter vagueness as to the

proposed terms, even within broad parameters, of any prospective offering. Wheat & Blackstone also point out that, long prior to the execution of an underwriting contract, and particularly where a complex undertaking is involved, it is customary to draw up an informal expression of the basic terms of the underwriting, which would include such matters as the underwriting discount (i.e. the spread between the purchase price and the re-offering price), and a formula by which the price to the public is to be determined. Here, only the gross amount of the issue or issues, and Hutton's conditions and privileges are actually specified. All of the material terms of the bonds are left open. While the investment banking firm of Lazard Frere & Co. has given the Commissioner its opinion that the commitments given were as firm as could reasonably be expected under all of the circumstances, this is by no means conclusive. (Letter, Lazard Freres & Co. to LeResche, March 20, 1980). One of the circumstances, not apparently considered, was the need and right of the State of Alaska to have reasonable assurances that the financing would go forward before permitting ALPECTO to purchase royalty oil. To the extent that a court would be willing to apply this criterion to the Valdez-Hutton commitment, there is a reasonable probability that it would be found wanting.

The final component of the total project financing is the commitment of the ALPETCO partners to contribute $350 million in equity capital. Again, these commitments are not entirely unequivocal, and, to the extent that after-occurring events may be considered, their reality may be seriously questioned. In the first instance, each of the owners of the ALPETCO joint venture has agreed to put up a proportionate share of equity capital. Charter Oil (Alaska) commits $245 million. Alaska Petrochemical Co., the original ALPETCO, commits $81.9 million, and E.F. Hutton (Alaska), Inc. commits $23.1 million. The commitments of Charter and Hutton are each confirmed by commitments of their respective parent companies. The commitment of Alaska Petrochemical is backed by its two shareholders, Seatrain Lines, Inc., and Alaska Interstate. In each instance, the commitment of the joint venture member is cross-conditioned on, and given in consideration of, the commitments of the other two joint venturers. Further, each of the equity contributors conditions its commitment

upon its approval "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 ALPECTO and the lenders providing such funds."

These items, although they do create a degree of uncertainty in fact, are probably not sufficient to raise a substantial question as to the character of these commitments as "binding." In most ventures of this kind, the permanent financing is eventually put together as a "package", and that all of the constituent transactions are actually closed simultaneously, or are deemed so. Thus, it is not a strong basis for legal attack that such components are materially dependent.

Of course, the above only strengthens the argument that if any part of a component of the permanent financing is inadequate, the entire component will fall; and the benchmark is not complied with.

Somewhat more disturbing is the provision, in each of the co-venturers commitment letters, which reads as follows:

> "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 10.2(3)(d) of the Royalty Oil Contract."

On its face, this language could be taken to indicate a lack of intention to fulfill the commitment. For example, it could be argued that it reflects an intention, once the benchmark was deemed satisfied, to substitute some other source of capital for the equity commitments of the partners. On the other hand, it could be argued that the intent of that language was merely to make clear that no third party was intended to derive rights from the partners' commitments, but that these rights ran only to ALPETCO itself. But if that was the intended meaning, it is

hard to explain the language "satisfying the Commissioner... as to ALPETCO's compliance...." Finding nothing in the record which explains this language, we can only make the point that it casts some doubt upon the reality of the equity commitment.

Another significant factor in determining the validity of the equity commitment arises not from contractual language, but from the question whether it was adequately demonstrated that the parties making the commitment were capable of making the capital contributions promised thereby. We have not reviewed and analyzed the financial positions of the ALPETCO joint venturers, nor of their owners or parents. However, were the matter to be contested, it would be important to determine what data was submitted, or otherwise obtained, to demonstrate the actual ability of the partners to make the contributions commited. As a result of after occurring events, it appears that there was at least some lack of reality in the commitment of Alaska Petrochemical.

We have been informed last week, and have noted in press reports, that Alaska Interstate Co. has withdrawn from the ALPETCO joint venture, and that Alaska Petrochemical, the original contracting party, and a 75% owned subsidiary of Alaska Interstate, "is out of business" (Wall Street Journal, May 9, 1980, p. 24).

That article indicates that "financing uncertainties" were cited as the reason for withdrawal. We have further been informed that the remaining partners in ALPETCO, principally Charter, and Hutton, have agreed to a restructing of the equity financing to assume the withdrawn partners share. However, it is not possible to draw, at this time, any conclusion as to the legal significance of these events, in the absence of detailed documentation.

This chain of events does, however, cast doubt upon the continuing validity of the equity commitment. The Royalty Oil Contract itself is silent as to whether, if the Eighteen Month Benchmarks were complied with at a particular time, they may be substituted for by revised, or even entirely different, arrangements. The original joint venture agreement among the ALPETCO partners does contemplate the possibility of the withdrawal of one of

the venturers, and the continuation of the ALPETCO venture by the remaining partners. It could be fairly argued by ALPETCO that, in accepting the assignment of the Contract from Alaska Petrochemical to ALPETCO in the first instance, the State accepted the ALPETCO Joint Venture Agreement, in totality.

On the other hand, it could be argued with some force that, since none of the partners was required to assume the position of the withdrawing partner, and since the Eighteen Month Benchmark provisions were part of a single, continuing course of progress intended to lead to definitive financing, and closings of financial agreements, by December 30, 1980, the withdrawal of Alaska Interstate, and the "out of business" status of Alaska Petrochemical are a breach of the conditions of Article 10.2(3). In addition, this development with respect to the equity financing provisions adds still another element to the cumulative dubiousness of overall compliance with the financing requirement of subdivision (d).

In conclusion, then, it is our opinion that ALPECTO has not complied with the provisions of Article 10.2(3)(d), and that an Alaska court should so find. However viewed, the Thyssen commitment does not meet the applicable standards we have discussed. The Valdez bond component and the equity component are of doubtful validity, particularly in the light of the interest and purpose of Article 10.2(3). Considering the requirements of subdvision (d) as a unity, it is again our opinion that they have not been satisfied.

2. <u>The Marketing Benchmarks</u>

Article 10.2(3)(b) requires that ALPETCO:

> "Negotiate sales terms with prospective purchasers of products from the Petrochemical facilities; delineate product requirements, production ratios and quantities for the range of products to be produced from the Petrochemical facility; and draft contracts for the sale of products from the Petrochemical Facility."

Article 10.2(3)(c) requires that ALPETCO:

> "Enter into contracts for the sale of at least seventy percent (70%) of the product output from the Petrochemical Facility."

From the submissions made by ALPECTO to the Commissioner, it is by no means clear that it has complied with either of these provisions. With respect to the sales and contracting provisions of subdivision (b), ALPETCO has made no separate submission, relying entirely on its submission in proported compliance with subdivision (c), to wit, the Product Sales Agreement between Charter Oil (Alaska), Inc. and ALPETCO, dated as of December 1, 1979.

With regard to the product requirements, production ratios, and production quantity requirements, ALPECTO submitted a schedule showing the range of output of various fuel and chemical products, showing a total output of some 146,200 barrels per day; all as a portion of "Stage I" of its proposed operation. In addition, it briefly indicated further petrochemical product development for "Stage II" and "Stage III".

Plainly, subdivision (b) is open ended and imprecise in many respects. ALPETCO is only required to "delineate" its product and production plans. To delineate means "to trace the outline of; sketch out." (Webster's New World Dictionary, 1972). It would be difficult to argue that ALPETCO has not done at least that much. In addition, it appears that an outside consultant has rendered its opinion to The Division Of Minerals and Energy Management to the effect that ALPETCO's submission in this regard appears to be "consistent with the processing configuration chosen for the refinery", that is, with the materials submitted in compliance with subdivision (h) of the bench mark provisions. To this extent, then, and in the absence of any evidence to the contrary, we have not found a substantial basis for challenging ALPETCO's compliance with this portion of subdivision (b). However, recent events raise some doubt as to this compliance. On April 28, 1980, the Commissioner wrote to ALPETCO's general manager, raising a question whether a design change in the Petrochemical Facility, submitted to the Commissioner on April 9, 1980,

affected ALPETCO's "apparent compliance with Article 10.2(3)(h)...." To the extent that compliance with subdivision (b) turns upon compliance with subdivision (h), it is possible that this is once again an open question. Further, one of the purposes of subdivisions (b) and (h) was to provide assurance to the State, and to the Legislature, that the ALPETCO project truly comprised a "Petrochemical Facility." If the changes in product and plant configuration raise a doubt as to whether that is in fact the character of the facility, then, as an ALPETCO attorney has testified, there is an additional basis for asserting a breach of the Royalty Oil Contract. (Transcript, March 20, 1978, p. 22).

There is a stronger argument that the remaining provisions of subdivision (b) have not been satisfied. As the Commissioner has been advised, unless the sales and contracting provisions of subdivision (b) are to be read as wholly redundant with subdivision (c), then, in order to satisfy (b), ALPETCO should have made reasonable submissions to demonstrate what it has done, in terms of negotiation and the drafting of contracts, to market the output not to be purchased under (c). (Memorandum, Boness to LeResche, Nov. 9, 1079, p. 13). ALPETCO has declined to make any such submission relying on the "Product Sales Agreement" between itself and Charter, dated December 1, 1979, for its compliance with this part of subdivision (b), as well as subdivision (c). It is possible that a court would read these provisions as redundant of one another, but we consider that the better view is that they are not, and that a separate submission under (b) was required. As the matter stands, the State has been given no indication whatever, (other than vague and apparently now inoperative pre-approval presentations) as to how, and on what terms, ALPETCO proposes to sell the 30% of its output which is not sold under the Charter contract. In view of the previously discussed purposes of this benchmark, there is a strong argument that this is a material non-compliance with the condition. Further, it might not be inappropriate for the Legislature to raise the question whether the refusal to furnish information is a cover for the fact that such marketing efforts have been unsuccessful; which would in turn, raise serious doubt as to the economic viability of the entire ALPETCO project.

This doubt is compounded by the nature of the contract submitted as compliance with subdivision (c). This contract, between ALPETCO and Charter, its 70% owner, while not prohibited by the terms of (c), is, at the very least, a violation of its spirit and purposes. The purpose of subdivision (c) was manifestly to demonstrate that there was indeed an actual demand in the marketplace for 70% of the Petrochemical Facility output. It should not be necessary to belabor the point that the existing contract is a strong indication to the contrary. Particularly with the withdrawal of Alaska Petrochemical from the venture, it has become primarily the venture of Charter, with the co-venturers retaining a rather minor fraction of ownership and responsibility. ALPETCO's agreement to sell to its principal partner, which has the greatest stake in the continuation of the project, and the accural of the right to purchase Royalty Crude Oil, is at best a dubious method for demonstrating any real demand for the products it proposes to produce. It at least raises the question whether Charter entered into the sales agreement as a last resort, to preserve the venture, and in the hope of finding product markets at some time in the future. Since it would be in a position to achieve significant revenues from crude oil transactions for several years,this is not an improbable inference. In addition, we note that the probable product configuration outlined in the Product Sales Agreement calls for an approximate 80/20 division between fuels and petrochemicals. While no particular product configuration is required in the Royalty Oil Contract, we have noted the repeated representations of ALPETCO to the Legislature of a determination to maximize high value-added petrochemical output. As ALPETCO's attorney said, if ALPETCO were to totally depart from the concept advanced in obtaining Legislative approval, that is, the concept of maximizing petrochemical production, the State would have a strong case for cancellation. This 80/20 configuration may come close to the repudiation of the underlying understanding to which Mr. Rogers referred. (Transcript, March, 1978, supra, at p. 22).

Another issue is raised by the term of the Product Sales Agreement. It is to run for fifteen years from the "date of the first cargo loading after completion of the Refinery and Terminal." The Royalty Oil Contract does not on its face require that the 70% of production sales

contract or contracts must run for any particular term. However, the Boness Memorandum of November 9, 1979 argues persuasively that, in view of the relationship between the financing requirements of the project and the demonstrable saleability of its output, any such product sales contracts should either cover the "remaining length of the Agreement itself" or "the length of the loans (or bonds)." (At p. 15) The term of the Royalty Oil Contract is twenty-seven years (Article 10.1). Unless it is contemplated that twelve years will elapse between the Effective Date of that Contract and the "first cargo loading", the Product Sales Agreement does not appear to comport with "the remaining length of the agreement" standard. By virtue of Article 2.7, (added by paragraph 4 of the Amendments of May 17, 1978), it is clearly contemplated that a petrochemical facility with a processing capacity of 150,000 barrels per day will be in operation six years after the Effective Date of the Contract. Thus, a twenty-one year period of actual operation of the Petrochemical Facility during the term of the Royalty Oil Contract is plainly contemplated. There is thus a term of six years, more or less, as to which no binding contract of sale has been effected.

Applying the alternate standard suggested in the Boness Memorandum, supra, there is no indication whatever that the period of the Product Sales Agreement is co-extensive with the term of any loans or other debt financing that may be obtained for the project. At this time, on the record we have examined, there has been no determination as to the maturities, or time terms, of any such anticipated debt financing. Thus, there is no way to apply this standard for measuring the adequacy, in terms of time coverage, of the Product Sales Agreement. We believe that a court could, and should, determine that the provisions of subdivision (c) require the sale of seventy percent (70%) of product output from the time when such product output commences until the expiration of the Royalty Oil Contract. While (c) is not specific in that regard, this is the most logical reading. The legitimate concern of the State extends to sales of the facility's output throughout the term of that Contract; and no other or shorter term is expressed or implied in subdivision (c). Thus, unless there is factual material of which we are not presently aware, it is our opinion that there is a strong and substantial

argument that the Product Sales Agreement is not in compliance with (c); and that ALPECTO has thus not complied with either subdivisions (b) or (c).

3. Other Eighteen Month Benchmark Provisions

On the available record, we do not see a strong basis for challenging ALPETCO's compliance with the remaining Eighteen Month Benchmarks, except as may arise from the Commissioner's letter to ALPETCO of April 28, 1980.

With respect to Article 10.2(3)(a), the $10 million expenditure requirement, ALPETCO reported that it had expended, or commited to expend, a total of $11,377,229.98. It further submitted a letter of Peat, Marwick, Mitchell & Co., reporting on the verification procedures that firm had performed. While these did not amount to a full audit, a fair reading of (a) does not call for such an audit. All it requires is that in fact ALPETCO has expended or commited to expend the required sums. This being the case, and no evidence appearing in the materials reviewed by us to indicate that they did not, in fact, do so, we do not believe there is a basis for challenging their compliance with the subdivision.

Article 10.2(3)(f) requires that ALPETCO "complete and file an environmental impact assessment on the petrochemical facility." It appears that this was in fact done. (House Research Agency Memorandum, Brody to Miles, February 20, 1980, p. 10).

Article 10.2(3)(g) requires ALPETCO to "complete and file all material state, local and federal permit applications." It appears that, on September 27, 1979, the Commissioner transmitted to ALPETCO a list of the permit applications, both state and federal, which he deemed material within the meaning of this provision. We have not independently researched the question whether this list was correct; and do not consider that that was within the scope of the inquiry to us. It appears that there was no question raised as to the propriety of ALPETCO's submission in compliance with this subparagraph until April 28,

1980. At that time, the Commissioner wrote to ALPECTO, noting that the Alaska Pipeline Commission had filed an Order to Show Cause with respect to " a permit for your crude and product pipelines." The Commissioner's letter indicates that the Pipeline Commission noted that it had received no such application. We are not at present in a position to render an opinion at to whether that permit is "material" within the meaning of subdivision (g); and it was not apparently included on the list of material "state permits" transmitted to ALPETCO. Nonetheless, the Commissioner has raised the question whether the failure to file for this permit constitutes non-compliance with subdivision (g), and it may well be that further exploration of the surrounding facts and circumstances is in order.

Subdivision (h) requires that ALPETCO:

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

We are not in a position to independently render our opinion as to whether the materials submitted by ALPETCO satisfy this bench mark, as this would require particular expertise in engineering, project design, etc. However, we note that two apparently substantial questions have been raised.

Firstly, some members of the Legislature have inquired whether this bench mark required ALPETCO to have obtained, by December 18, 1979, the definitive project cost estimate. It is our opinion that this is not the case. The phrase "necessary to obtain" has implicit in it that the cost estimate is to be obtained in the future, and that the plant design and optimization is all that must be completed by the cut off date. It appears that the state has received the opinion of independent consultants that this work was in fact accomplished. (House Research Agency Memorandum, supra, at p. 10).

Secondly, the Commissioner's letter to ALPECTO dated April 28, 1980, raises the question whether the design change submitted to him on April 9, 1980, effects ALPECTO's "previous apparent compliance" with this provision. The raising of this question, we believe, calls for further factual inquiry.

Conclusion As To Article 10.2(3)

On the basis of the foregoing, we conclude that ALPECTO was not, on December 18, 1979, or thereafter, in compliance with all of the provisions of Article 10.2(3). More particularly, there is a strong case that it has failed to comply with the overall financing requirements of Article 10.2(3)(d), and the interim financing requirements of Article 10.2(3)(e). In addition, a strong case can be made for failure of compliance with Article 10.2(3)(b) and 10.2(3)(c), subject to the caveat that it is more difficult to measure what is called for by these subdivisions than it is to measure what is called for by the financing provisions, as a matter of legal interpretation of the relevant documents and evidence.

III. Is There A Basis For Challenging The Determination Of The Commissioner Of Natural Resources That ALPETCO Was, And Is, In Compliance?

On February 9, 1980, the Commissioner, in letter to ALPETCO, stated:

> "After thoroughly reviewing the documents submitted by you on or before December 18, 1979, I am of the opinion that the Alpetco Company, as the duly approved assignee of all of the rights of Alpetco Petrochemical Company under the Agreement...has timely fulfilled all the requirements set forth in Article 10.2(3)(a-h) of the Agreement, and that the Agreement is in full force at the date hereof."

It is our opinion that, under the law of Alaska, this opinion, or determination, is subject to judicial re-

view, and that such review can result in its being overturned, if the court were to decide that the Commissioner had exceeded his authority under the Royalty Oil Contract, or had failed to follow the intent of the legislature in interpreting the requirements of that contract. See, e.g., Moore v. State of Alaska, 553 P.2d 8 (Sup.Ct. of Alaska 1976) (concurring opinion of Rabinowitz, J., at 30-33); see also State v. Aleut Corp., 541 P.2d 730 (Sup.Ct. of Alaska 1975); K&L Distributors, Inc. v. Murkowski, 486 P.2d 351 (Sup.Ct. Alaska, 1971).

The authorities, however, are not entirely clear as to the standard of review that would be applied. The broadest standard is applied where the courts have been called upon to determine whether an administrative officer or agency has failed to follow the procedural requirements for making a determination. This was the standard applied in Moore v. State of Alaska, supra, and State v. Aleut Corp., supra.

A much more limited standard is applied where the courts are asked to review the substantive merits of an administrative decision, and the opinions generally state that the administrative determination will be upheld unless it is arbitrary and capricious, or lacking in a reasonable basis in the record. See Jager v. State, 537 P.2d 1100 (Sup.Ct. Alaska 1975); Swindel v. Kelly, 499 P.2d 291 (Sup.Ct. Alaska 1972); Mobil Oil Corp. v. Local Boundary Comm'n, 518 P.2d 92 (Sup.Ct. Alaska 1974).

The infirmities in the Commissioner's determination here are not, in the strict sense, infirmities arising out of failure to follow a specified administrative procedure. No specific procedure was set out in the Royalty Oil Contract for any such determination; nor is this the type of determination that appears subject to the administrative procedures statutes. In fact, that contract does not call for the Commissioner to make any determination, as such, under Article 10.2. By its terms, that Article provides for the Royalty Oil Contract to terminate of its own force if any of the various benchmarks provisions are not complied with. It appears that the Commissioner, on behalf of the State, would be required to assert the termination. In that sense, it is arguable that he was required to make such a determination -- but merely in an executive, as dis-

tinguished from a quasi-judicial, capacity. Similarly, under Article 2.2, ALPETCO was required to demonstrate its compliance to the satisfaction of the State. Thus, it is at least reasonable to infer that the Commissioner, on behalf of the State, was to decide and to notify ALPETCO whether such a demonstration had been made.

Given that such a power existed, even in the absence of provisions mandating a particular procedure for exercising it, the Court should, and probably would, at least require that the Commissioner adhere to the intent and meaning of the Royalty Oil Contract in testing compliance with the benchmark provisions of Article 10.2(3). This is particularly so since the approval of the Legislature was required as a condition to its effectiveness. A court could fairly determine that the Commissioner's adherance to such intention, as expressed in the benchmark provisions themselves, should be examined in the same manner as an administrator's compliance with statutes or regulations promulgated by, or under the authority of the Legislature. As the Court wrote in State v. Aleut Corp. supra:

> "...when determining questions of whether proper procedures were observed, whether the administrative agency has acted within the scope of its authority, or whether an agency's interpretation of regulations is consistent with the statutes on which they are based, we are not faced with problems involving specialized or administrative expertise." (541 P.2d at 736)

It is not unreasonable to expect that the court, in the present case, might indeed exercise its own independent judgment as to whether the Commissioner had interpreted Article 10.2(3) of the Royalty Oil Contract in accord with the Legislative intention, to wit, that the benchmark provisions be strictly enforced. While the Commissioner presumably has administrative expertise with respect to matters bearing specifically upon the leasing, sale or other disposition of natural resources, there is little basis for arguing that an administrative official has greater expertise than the court in interpreting a contract, or the provisions of a contract regarding obligations to obtain financial commitments, or to enter into particular types of commercial contracts.

Whatever standard of review might arguably be applied, it is at least clear that judicial review is not foreclosed; as nothing in the Royalty Oil Contract gives rise to any inference that the Commissioner's determination was intended to be final and unreviewable. Even if there were any such indication, this would not bar at least limited judicial scruinity. K&L Distributors, Inc. v. Malschik, supra.

Further, even if the court were to decide that the Commissioner should be sustained unless his determination was arbitratary and capricious, a reasonably strong case can be made that it should be overturned. There is evidence in the record we have reviewed that the Commissioner did not follow the applicable legal standards set forth in the memorandum opinions he received from counsel, that is, from Boness. He found ALPETCO in compliance with subdivision (b), in spite of the absence of any separate submission in compliance with the sales negotiation and contract preparation requirements of that subdivision. (Compare, Boness Memorandum, November 9, 1979, p. 13). He did not apply the standards set out, in the same memorandum, for considering whether the time period covered by the Product Sales Agreement constituted compliance with subdivision (c). (Boness Memorandum, supra, p. 15). Further, it is at least strongly arguable that he ignored the requirement that the commitments offered in satisfaction of the requirements of subdivisions (d) and (e) be "firm", i.e. legally binding, commitments. (Compare, Boness Memorandum, supra, pp. 15 - 17).

There is also some evidence in the materials we have reviewed that the Commissioner may have made his determination on the basis of advice that, should he uphold ALPETCO's compliance, he would not be overruled in a court challenge, rather than on the basis that actual compliance had occurred. (See Boness Memorandum, February 21, 1980, p. 10). Of course, whether or not this was actually the case could only be determined by further inquiry, in a judicial proceeding or otherwise.

A court would also probably overturn the Commissioner's determination if it found that he had determined to accept substituted performance with regard to such matters as, the Thyssen component of the permanent financing required under subdivision (d) of the Royalty Oil Contract.

As we have previously discussed, the provisions of Article 22 and Article 17 of that contract give rise to a strong argument that he had no power to do so, without returning to the Legislature for a new consideration and approval or disapproval. Of course, were the court to agree that the Commissioner had improperly accepted a substituted performance, it would follow that his determination was without legal effect, in that it was in and of itself a violation of the conditions of the Royalty Oil Contract, as approved.

Thus, while the matter is not without difficulty, there is a strong case that, even if a court were to apply the "arbitrary and capricious" standard, it could overturn the Commissioner's action. If the court were to determine, alternatively, that due to the nature of the Royalty Oil Contract and the Legislative approval required for its effectiveness, its interpretation by the cognizant administrator was subject to review for substantive correctness, then, for the reasons discussed in part II of this Memorandum, it is our considered opinion that it is highly likely that the determination of ALPETCO's compliance could be subjected to a successful challenge.

It is difficult to predict in advance the standard or review that would be applied, since the situation here is not precisely analogous to that found in the prior authorities. The standards of review the courts have articulated are not as crucial to the outcome of a particular case as they appear, on the surface to be. If a court can be persuaded that the admnistrator concerned has acted inconsistently with the fundamental purposes of the law or regulation he is administerng, there is a good probability of a successful challenge. Here, we think the better view is that the Commissioner's determination should be reviewed as not entitled to particular deference. He was not to make policy determination in reviewing ALPETCO's compliance with Articles 10.2(3) or 2.2. These had been made and expressed in the Royalty Oil Contract itself and in the Legislature's action thereon. He was not, as in other cases, to determine whether his findings were in the best interests of the State (Cf. A.S. 38.05,035(a)(14)). Rather, he was to see that the State received what it had already bargained for. Where he was bound so to act, there is a strong argument that a court need not defer to administrative expertise, but should fully exercise its competence to review the matter, if not

de novo, at least in a manner consistent with the concept that the judiciary has the greatest expertise in dealing with the legal and factual issues arising out of the making and performance of contracts.

Conclusion As To The Commissioner's Determination

The Commissioner's determination should be held subject to judicial review. The standard of review that would be applied is not clear from the case law. Whatever standard would be applied, there is a strong case that the determination of February 9, 1980 was inconsistent with the meaning and purposes of the Royalty Oil Contract; and was erroneous to such a degree as to warrant reversal.

Respectfully submitted,

WOLF POPPER ROSS WOLF & JONES

By: _____
ERIC L. KEISMAN

Rep. Malone

# STATE OF ALASKA

**THE LEGISLATURE**

BUDGET AND AUDIT COMMITTEE

FINANCE DIVISION
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M E M O R A N D U M

DATE: May 8, 1980

TO: Honorable Bill Miles, Co-Chairman
House Resources Committee

FROM: Milt Barker, Fiscal Analyst MB
Legislative Finance Division

SUBJECT: Alpetco Refinery Cash Flow

Table 1 (attached) is a projection of the operating cash flow of the proposed Alpetco facility over the life of the 27-year contract with the state. It is a best guess, based on publicly available data including data released by Alpetco, yet subject to a great deal of uncertainty.

Three areas of greatest uncertainty are:

The spread between the market value of a barrel of product and the cost of a barrel of feedstock. This cash flow basically freezes this relationship as it existed in the spring of 1980 over the life of the project. Data published in "Petroleum Intelligence Weekly" seem to indicate that this spread has varied as much as $2.00 in the past two years, using contract prices for crude and spot prices to value the products. It can be calculated from Table 1 that a narrowing of this spread by $1.39 or more would eliminate entirely the pre-tax cash flow, given the assumptions used for debt service. Presumably, contract prices for products would show less variation in spread from feedstocks also costed at contract rates. However, long-term predictions about the crude and crude product markets seem very hazardous; thus, this projection expresses profound ignorance about future market relationships.

Construction costs. It uses the $1,432.0 million figure contained in the Kutak Rock & Huie letter of December 11, 1979 (attached). Yet until the engineering cost estimate is obtained, this figure cannot be presumed to be very accurate. Moreover, cost overruns for large custom projects such as this are not unknown.

Assuming no tax-exempt financing is allowed does not do great damage to the projected cash flows; debt service increases only $10 million. However, should debt financing requirements exceed $1,779.3 million (total project costs of $2,128.0),



AGO 559858

pre-tax cash flow would fall to zero during the first 20 years. The possibility of foreign export financing mentioned at hearings would possibly decrease debt service costs.

Operating costs. Bonner and Moore estimated operating costs at $5.00 per barrel for the original Alpetco petrochemical facility. However, since Alpetco's latest product slate (Table 2) denotes a fuels refinery, operating costs were reduced to $2.00 per barrel. Bonner and Moore had estimated the operating costs for the 150,000 BPD Alaska Petroleum refinery at $1.06 per barrel.

At $2.00 per barrel of output, this would be total annual operating costs of $105 million. The Alpetco draft EIS estimates annual wage payments for operations at $18.6 million per year or 35¢ per barrel. Thus, $2.00 may be high depending on costs for maintenance, catalysts, and other items. If operating costs exceeded $3.39 per barrel, the $73.1 million annual pre-tax cash flow would be wiped out.

Other cost elements not included in the pro-forma cash flow that could be consisered part of the $2.00 operating charge are property taxes and field costs.

If the population impact on Valdez amounts to 2,124 persons as stated in Alpetco's EIS and Valdez continues to tax at the per capita maximums permitted by law, property taxes on Alpetco would come to $70.0 million or 12.7¢ per barrel.

If the Amerada-Hess case had been settled with Alpetco agreeing to pay the field costs, this would have been 47¢ per barrel of product or $24.6 million per year. The expected value of continued litigation should be around 31¢ per barrel or $16.4 million per year in field costs that Alpetco will be obligated to pay.

Tax Benefits and Rate of Return

Investment tax credits can only be carried forward seven years and may not exceed 50% of tax liability. Thus, they would be largely of no use to Alpetco given this pro-forma statement which has operating losses for the first five years. This may be one of the reasons why the project has been organized as a joint venture (a general partnership) so that the investment tax credits flow through to the partners who can use them, at least in the case of E.F. Hutton and Charter who by virtue of 100% ownership of their Alaska subsidiaries can consolidate the tax returns of partner and parent.

Thus, for computing the rate of return in one instance, the investment tax credit has been considered a reduction in the partners' capital investment.

As a partnership, the tax losses cannot be carried forward and applied to future joint-venture taxable income but must instead be flowed through to the partners in the year of the loss. Thus, depending on the partners' effective tax rate, there are additional tax benefits in the first years not reflected in the rate of return, if the partners have other income to shelter.

Finally, the rate of return does not consider any profits earned on the brokering or refining of royalty crude prior to refinery start-up.

While Alpetco will look to the rate of return on equity to evaluate its investment, potential bondholders will be looking to the operating income available to cover debt service and the amount of equity and value of assets as collateral in the event the project fails. The certainty of operating income for a facility that is to be project financed as this is becomes paramount since the parents' income and assets are not standing behind it. Without firm take or pay contracts from a creditworthy party, the operating income remains uncertain.

MB:vsw

Attachments

TABLE 1
ALPETCO
PRO FORMA OPERATING CASH FLOW
($ millions)

| Year | (a) Operating Income | (b) Debt Service on Bonds | (c) Pre-Tax Cash Flow (a - b) | (d) Depreciation | (e) Payments to Principal | (f) Taxable Income (c-d+e) | (g) Income Tax (50% x f) | (h) Alaska Endowment Trust (5% x g) | After-Tax Cash Flow (c - g - h) |
|---|---|---|---|---|---|---|---|---|---|
| 1983 | 235.1 | 162.0 | 73.1 | 179.0 | 19.4 | (86.5) | | | 73.1 |
| 1984 | 235.1 | 162.0 | 73.1 | 157.0 | 21.6 | (62.3) | | | 73.1 |
| 1985 | 235.1 | 162.0 | 73.1 | 137.0 | 24.1 | (39.8) | | | 73.1 |
| 1986 | 235.1 | 162.0 | 73.1 | 120.0 | 26.7 | (20.2) | | | 73.1 |
| 1987 | 235.1 | 162.0 | 73.1 | 105.0 | 29.8 | ( 2.1) | | | 73.1 |
| 1988 | 235.1 | 162.0 | 73.1 | 92.0 | 33.2 | 14.3 | 7.1 | | 66.0 |
| 1989 | 235.1 | 162.0 | 73.1 | 80.0 | 36.9 | 30.0 | 15.0 | | 58.1 |
| 1990 | 235.1 | 162.0 | 73.1 | 70.0 | 41.2 | 44.3 | 22.1 | | 51.0 |
| 1991 | 235.1 | 162.0 | 73.1 | 62.0 | 45.9 | 57.0 | 28.5 | | 44.6 |
| 1992 | 235.1 | 162.0 | 73.1 | 54.0 | 51.1 | 70.2 | 35.1 | | 38.0 |
| 1993 | 235.1 | 162.0 | 73.1 | 47.0 | 57.0 | 83.1 | 41.6 | 2.1 | 29.4 |
| 1994 | 235.1 | 162.0 | 73.1 | 41.0 | 63.5 | 95.6 | 47.8 | 2.4 | 22.9 |
| 1995 | 235.1 | 162.0 | 73.1 | 36.0 | 70.8 | 107.9 | 53.9 | 2.7 | 16.5 |
| 1996 | 235.1 | 162.0 | 73.1 | 32.0 | 79.0 | 120.1 | 60.0 | 3.0 | 10.1 |
| 1997 | 235.1 | 162.0 | 73.1 | 28.0 | 88.2 | 133.3 | 66.7 | 3.3 | 3.1 |
| 1998 | 235.1 | 162.0 | 73.1 | 24.0 | 98.3 | 147.4 | 73.7 | 3.7 | (4.3) |
| 1999 | 235.1 | 162.0 | 73.1 | | 109.8 | 182.9 | 91.4 | 4.6 | (22.9) |
| 2000 | 235.1 | 162.0 | 73.1 | | 122.5 | 195.6 | 97.8 | 4.9 | (29.6) |
| 2001 | 235.1 | 162.0 | 73.1 | | 136.7 | 209.8 | 104.9 | 5.2 | (37.0) |
| 2002 | 235.1 | 162.0 | 73.1 | | 152.7 | 225.8 | 112.9 | 5.6 | (45.4) |
| 2003 | 235.1 | | 235.1 | | | 235.1 | 117.6 | 5.9 | 111.6 |
| 2004 | 235.1 | | 235.1 | | | 235.1 | 117.6 | 5.9 | 111.6 |
| 2005 | 235.1 | | 235.1 | | | 235.1 | 117.6 | 5.9 | 111.6 |
| TOTAL | 5407.3 | 3240.0 | 2167.3 | 1264.0 | 1308.4 | 2211.7 | 1211.3 | 55.2 | 900.8 |

Internal Rate of Return (1) based on $348.7 million investment — 15.4%

(2) based on $205.5 million investment (net of 10% investment tax credit on $1432.0 million construction cost) — 32.2%

PREPARED BY:

LEGISLATIVE FINANCE DIV.
May 7, 1980

AGO 559861

FOOTNOTES TO TABLE 1

ALPETCO
PRO FORMA OPERATING CASH FLOW
($ millions)

NOTES: (a) 143,952 BPD of products @ $40.36 (from Table 2 of this memo) less $2.00 per barrel operating costs less $2.00 per barrel transport costs less 150,000 BPD of feedstock @ $30.60 per barrel (from Table 2 of April 26, 1980 memo "Alpetco Profits prior to Refinery Start-up"). The Bonner & Moore "Evaluation of Proposals for Royalty Oil Utilization" estimated the original Alpetco petrochemical facility's operating costs at $5.00 per barrel vs. $1.06 for the Alaska Petroleum 150,000 BPD fuels refinery. Phillips Petroleum reports tanker costs for February 1980 of $1.28 from Valdez to Los Angeles; the Alpetco sales contract with Charter Oil (Alaska) provides a further charge of 50¢ per barrel may be deducted from the sales price for unleaded gasoline and diesel.

(b) Assumes $450.0 million in tax-exempt bonds at 9% for 20 years plus $858.6 million in taxable bonds at 12% for 20 years, a total of $1308.6 million indebtedness as shown on attached Alpetco pro-forma construction funds flow statement from December 11, 1979 Kutak Rock & Huie letter. Tax-exempt bonds are reduced to $450 million based on Alpetco's oral testimony that this is the amount they are sure will qualify for tax-exempt status.

(d) Double declining balance method over 16 years as in the Bonner and Moore report for $1,432.0 million in construction cost as estimated on the Alpetco pro-forma statement.

AGO 559862

TABLE 2

ALPETCO

Value per Barrel of Output

| Product Slate | Output BPD | Price $/B |
|---|---|---|
| Unleaded Gasoline | 45,056 | 42.00 |
| Jet Fuel | 40,018 | 37.00 |
| Diesel | 33,396 | 33.50 |
| Benzene | 2,545 | 72.45 |
| Toluene | 5,635 | 56.70 |
| Xylene | 6,172 | 56.28 |
| Naphtha | 11,130 | 42.00 |
| Total | 143,952 | |
| Weighted Average Price per Barrel | | 40.36 |

NOTES:

1. April 9, 1980 revised product slate of Alpetco; uses average percent of total products where a range of output is given.

2. Recent prices for Benzene, Toluene and Xylene from "Chemical Marketing Reporter"; other prices from "Platt's Oilgram Price Report."

PREPARED BY:

LEGISLATIVE FINANCE DIV.
May 7, 1980

AGO 559863

Exhibit I

THE ALPETCO COMPANY

December 12, 1979

Pro Forma Funds Flow Statement
($Millions)

| Source | 1977 to 3rd Qtr, 1979 | 1979 4th Qtr. | 1980 1st | 1980 2nd | 1980 3rd | 1980 4th | 1981 1st | 1981 2nd | 1981 3rd | 1981 4th | 1982 1st | 1982 2nd | 1982 3rd | 1982 4th | Total |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 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 | 14.1 | 2.2 | 24.5 | 81.5 |
| E.F. 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 | 70.1 | 86.1 | 87.6 | 88.8 | 92.5 | 88.6 | 170.5 | 735.7 |
| Tax Exempt Bonds-Gen[2] | -0- | -0- | -0- | -0- | -0- | -0- | 60.2 | 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) | (70.1) | (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 | 163.6 | 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 | 10.3 | 39.1 | 154.4 | 160.2 | 171.1 | 166.1 | 177.8 | 163.0 | 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 18, 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.

AGO 559864

Attachment to
Questions for Lekesche
5/8/80

Alpetco

December 18, 1979

Mr. Gordon Cain
Alpetco
3700 Buffalo Speedway
Suite 806
Houston, Texas 77098

Dear Mr. Cain:

On December 13, 1979 I received from you various letters, reports, contracts, and other documents relating to Article 10.2 (3)(a)-(c) and (f)-(h) and on December 13, 1979 I received from you additional information relating to Article 10.2(3)(d) and (e), the Joint Venture Agreement between Alaska Petrochemical Company, Charter Oil (Alaska), Inc. and E. F. Hutton (Alaska), Inc. and certain other information.

Under Article 10.2(3), the Agreement automatically terminates on December 19, 1979, unless Alpetco has satisfied all of the benchmark requirements or unless I grant Alpetco a six month extension as authorized under Article 10.2(3) of the Agreement. As of this date, December 18, 1979, I, my staff and advisors have not had sufficient time to review and analyze fully the information submitted by you. Thus, I have not determined whether or not I share your conclusion that you have satisfied the benchmark requirements. I shall be able to do so within the next thirty days and will advise you of my conclusions, in writing, not later than January 18 (hopefully sooner).

If I should conclude the information submitted does demonstrate satisfaction of the benchmark requirements then our Agreement remains in effect. If, on the other hand, I should conclude that you have not satisfied the benchmark requirements then I believe the contract would have terminated automatically on December 18, 1979. I am satisfied now that I would want to offer you the opportunity to satisfy the benchmark requirements by June 18, 1980, should I conclude you have not satisfied them by December 18, 1979. Accordingly, I hereby grant you the six month extension authorized under Article 10.2(3).

AGO 559865

Jennie

In granting this extension I wish to make certain items clear. First, I offer no opinion or judgment at this time concerning Alpetco's compliance or non-compliance with Article 10.2(3). The provision is complex and more time is needed to review the information submitted by Alpetco. I see no benefit either to Alpetco or to the State by offering a preliminary opinion based on partial analysis, since such preliminary judgment would not provide either of us with the firm representations needed to proceed. Second, I recognize and appreciate that Alpetco's position is that it has complied with Article 10.2(3) and an extension is neither necessary nor requested by Alpetco. Nevertheless, I am granting the extension because I do not wish to preclude the opportunity of allowing you additional time to comply in the event I cannot concur with you. Without this action of granting you the extension I believe that on January 18, should I conclude you have not complied, the Agreement would be terminated. By granting this extension you will have the opportunity but, not the obligation to take additional steps, of course, to satisfy Article 10.2(3).

Sincerely,

Robert E. LeResche
Commissioner

REL:blg

OFFICE OF THE GOVERNOR
JUNEAU

JAY S. HAMMOND
GOVERNOR

FOR INFORMATION CONTACT:
[redacted]
Office of the Governor
Pouch A Juneau, Alaska 99811
OR PHONE: 907-465-3500
Gladys Reckley
Press Secretary

HAMMOND GIVES APPROVAL FOR ALPETCO PROJECT
DECEMBER 27, 1979
#276

FOR IMMEDIATE RELEASE

JUNEAU--Gov. Jay Hammond today said he is advised that the Alpetco Company has satisfied all terms of the initial part of its contract for state royalty oil.

Hammond's approval of Alpetco's critical 18-month benchmark clears the way for the company to proceed with construction of its $1.5 billion dollar petrochemical refinery complex in Valdez.

The governor said, "this 18-month benchmark was an important key to the contract. " During that period Alpetco secured commitments for its financing from the City of Valdez and from large corporations; it contracted to sell 70 percent of the facility's products; secured commitments for interim financing; filed a complete Environmental Impact Statement; filed all material state, local and federal permit applications; completed plant design and optimization necessary to obtain a definitive project cost estimate; delineated a product slate; and spent $10 million as required by the contract.

-more-

AGO 559867

Hammond said, "the status of Alpetco's progress to date has reinforced my view that Alaska need not subsidize new industry, but can require that it be self-sustaining and environmentally sound.

"These policies will insure that healthy growth occurs in our state, and Alpetco has come a long way toward this objective," Hammond added. The governor noted also that the state contract was written to insure that the construction phase of the Alpetco project is carried out with diligence.

-30-

February 8, 1980

The Alpetco Company
3700 Buffalo Speedway
Suite 806
Houston, Texas 77098

Re: Agreement for the Sale and Purchase of State Royalty Oil Between Alaska Petrochemical Company and the State of Alaska dated February 22, 1980, as amended by Amendment dated May 17, 1978.

Gentlemen:

After thoroughly reviewing the documents submitted by you on or before December 18, 1979, I am of the opinion that the Alpetco Company, as the duly approved assignee of all of the rights of Alaska Petrochemical Company under the captioned Agreement (the "Agreement"), has timely fulfilled all the requirements set forth in Article 10.2(3)(a-h) of the Agreement, and that the Agreement is in full force and effect at the date hereof.

Sincerely,

Robert E. LeResche
Commissioner

AGO 559869

Lonnie

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER / POUCH M — JUNEAU 99811

April 28, 1980

Mr. Dudley K. Parker
General Manager
The Alpetco Company
3400 Buffalo Speedway
Houston, Texas 77098

Dear Mr. Parker:

Since my letters of December 18, 1980, extending the period of compliance for your 18 month benchmark under Article 10.2(3) (a-h), and of February 8, 1980, wherein I stated my opinion that you had complied with that benchmark based upon your submissions of that date, several things have come to my attention. These new pieces of information have led me to consider again whether compliance has in fact occurred under present circumstances.

First, the Alaska Pipeline Commission filed Docket No. P-80-2, Order No. 1 on March 10, 1980, ordering Alpetco to show cause and secure a permit for your crude and product pipelines. The Commission noted that it has received no application for the pipelines under AS 42.06.240. Article 10.2(3)(g) requires that you "complete and file all material state, local and federal permit applications" within the benchmark time period.

Second, on April 9, 1980, you submitted a letter to me describing a design change in your facility. I will have to have this design change evaluated in detail to determine whether your previous apparent compliance with Article 10.2(3)(h) has changed, and whether the newly-described facility meets the requirements of Article 4.2.1.

Third, it is important that I determine whether you have proceeded "with reasonable diligence" as required in Article 4.2.1 since December toward meeting the 24 and more importantly the 30-month benchmark requirements. In this regard, I

AGO 559870

10-J9LH

request that you submit to me a more thorough description of your progress in preparing the definition financing documents as required by Article 10.2(5), including drafts, and of your progress toward contracts for actual construction work at Valdez including any contracts, as required by the same article.

As you know timely financing and construction of the petrochemical facility promised is absolutely essential if our contract is to remain in force. Further substantiation that such is in fact occurring is necessary at this time.

Sincerely,

Robert E. LeResche

Robert E. LeResche
Commissioner

LAZARD FRÈRES & CO.
ONE ROCKEFELLER PLAZA
NEW YORK, N.Y. 10020

CABLE ADDRESS "LAZARD NEW YORK"
TELEPHONE (212) 489-6600

NEW YORK

March 20, 1980

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

Dear Commissioner LeResche:

You have asked me to write down the salient points of my several discussions with you of last December regarding the Alpetco project, and specifically how we viewed the documentation and representations made to you by Alpetco, E. F. Hutton Group and Thyssen Rheinstahl Technik in light of the benchmark requirement outlined in Article 10.2(3)(d) of the Agreement for the Sale and Purchase of State Royalty Oil dated February 22, 1978.

At that time we reviewed letters dated December 7, 1979 and December 18, 1979 from Thyssen Rheinstahl Technik to The Alpetco Company, letters dated November 19, 1979 and December 21, 1979 from The E. F. Hutton Group to The Honorable Bill Walker, Mayor, City of Valdez, and letters dated December 13, 1979 to The Alpetco Company from Charter Oil (Alaska), Inc., The Charter Company, Alaska Petrochemical Company, Alaska Interstate Company, Seatrain Lines, Inc., E. F. Hutton (Alaska), Inc. and E. F. Hutton Group, Inc.

It was our opinion at that time that the letters referred to above, taken as a whole, could be considered to be a reasonable financial commitment under the special circumstances of this project.

The special circumstances to which we referred were (a) the size of the project, (b) the additional engineering work which would have to be completed prior to irrevocable commitments from long term lenders, and (c) that major construction on the project itself would not commence for one year.

In addition, we took into consideration

-- the financial strength and reputation of Thyssen, as well as the experience and reputation of the E. F. Hutton Group, Inc.

-- statements by the Chairman of the Thyssen Board, Dr. Gshwend, in Seattle on December 13, 1979, attesting

to the assumption by Thyssen of responsibility to complete the financing package;

-- statements made by representatives of the sponsors and senior officials of Thyssen that engineering studies which will require an estimated $25 million to complete have been commenced;

-- acceptance of the requirement that the sponsors must spend $100 million before the State will deliver any royalty oil.

We offered no opinion as to whether or not the statements of Thyssen, the sponsors and the E. F. Hutton Group constitute a binding legal commitment. We did understand that you had discussions with counsel on this matter. From the point of view of a member of the financial community, however, we believed that these oral and written statements were, in a practical sense, as firm as could realistically have been anticipated at the time.

Very truly yours,

Peter A. Lewis

PAL:g

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.

AGO 559874

601 WEST 5TH AVENUE, ANCHORAGE, ALASKA, 99501, TELEPHONE 907 272-1517, TELEX 090-251157

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

Gordon A. Cain
President

GAC:t
Enclosures.

Rec'd 12-17-79
10 25 am

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 CONSTRUCTION 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 SJUBJECT TO THE FOLLOWING:

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

8566561Z TRT D

western union

THYSSEN

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 | Unser Hausruf (Direktwahl) (02 11) 38 03- | Düsseldorf |
|---|---|---|---|---|
| | | Recht/Dr.W./ho | | 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.



AGO 559878

Geschäftsführung: Dr. Helmut Gschwend (Vorsitzender)

Handelsregister-Nr. HRB 3311

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.

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

AGO 559880

cc: Don Holman, Esq.

April 4, 1977

[illegible] Company, U.S.A.
P. O. Box [illegible]
Houston, Texas 77001

Attention: Robert W. Hoge, 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 by ordinance provide 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.

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 critized the court's earlier opinions. In Jefferson v. State, the court held that Article X, §11, which states that:

> "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 statewide 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 critized 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

> "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.

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

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:

> "Only the following provisions of this title apply to home rule municipalities as prohibitions on acting otherwise than as provided."

At footnote 33, 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 Roderick 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 lessor 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.

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 8 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

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."

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 perameters 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 striken. 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:jr

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 ⇨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 ⇨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 ⇨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, § 9.

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

4. Municipal Corporations ⇨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, § 6.

5. Municipal Corporations ⇨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, § 6.

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Eric 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.

AGO 559893

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 698 (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 995, 998 (Alaska 1969), 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 Aetna Life Insurance Company of Hartford, Conn. v. Haworth, 300 U.S. 227, 57 S.Ct. 461, 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.)

AGO 559894

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 Andalusia, 257 Ala. 49, 57 So.2d 629 (1952); Wayland v. Snapp, [232 Ark. 57], 334 S.W.2d 623 (Ark.1960); Dycke [sic] v. City of London, 288 S.W.2d 648 (1956); Miller v. Police Jury, 226 La. 8, 74 So.2d 391 (1954); City of Frostberg [Frostburg] v. Jenkins, 215 Md. 9, 136 A.2d 852 (1957); Village of Deming v. Hosdreg Co., 62 N.M. 18, 303 P.2d 920 (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, 59 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."

AGO 559895

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 constitution[6] 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, 257 Ala. 49, 57 So.2d 629 (1952); Wayland v. Snapp, 232 Ark. 57, 334 S.W.2d 633 (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 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."



AGO 5591896

*Hixson* case[7] as being "associated with value represented by real or personal property in some form and with relative permanency." 373 P.2d, at 747. 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 FULFILLMENT 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,

> "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

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 acres of downtown property from the city's tax rolls." 373 P.2d, at 748.

8. See Note, "Legal Limitations on Public Inducements to Industrial Location," 59 Colum.L.Rev. 618 (1959).

9. Newberry v. City of Andalusia, 257 Ala. 19, 57 So.2d 629 (1952); Wayland v. Snapp, 232 Ark. 57, 334 S.W.2d 623 (1960); Dyche v. City of London, 288 S.W.2d 678 (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.

AGO 559897

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 546 (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. 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.

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

AGO 559898

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ANGELO P. PARKER
J. MICHAEL GOTT&CHALK
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JOE E. ARMSTRONG
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JOEL T. BOEHM
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DANIEL S. REYNOLDS
DAVID A. JACOBSON
P. THOMAS POOLE
J. THOMAS MARTEN
D. CHARLES SHOEMAKER
KENNETH R. DODDS
WALTER L. GRIFFITHS
THOMAS B. KOLLEY
JO E. BASS
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JUDY A. WEILL
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FRANK L. BURBRIDGE
GAIL E. BURBRIDGE
COUNSEL

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1200 STANDARD FEDERAL SAVINGS BUILDING
ATLANTA, GEORGIA 30303
404 522-6700

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

MINNESOTA
4644 IDS TOWER
MINNEAPOLIS, MINNESOTA 55402
612 338-1440

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

December 14, 1979

Dr. Robert LeResche
Commissioner of Natural Resources
Pouch "M"
Juneau, Alaska 99801

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;

(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

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

AGO 559901

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

AGO 559902

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.

AGO 559903

601 WEST 5TH AVENUE, ANCHORAGE, ALASKA 99501, TELEPHONE 907 272-1517, TELEX 090-25157

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

The Company obtained financing commitments for the project in the aggregate of $1.7 billion.

On November 19, 1979 the City of Valdez, Alaska unanimously passed Ordinance 7917 authorizing the City to issue tax exempt industrial revenue bonds to finance the Alpetco project. Also, on November 19, 1979, the City Council of Valdez unanimously passed Resolution 7953 authorizing the Mayor of Valdez to execute a commitment to lend Alpetco $600,000,000 from the proceeds of the sale of tax exempt industrial revenue bonds. To support this commitment, the City of Valdez has obtained and underwriting commitment, dated November 19, 1979 from E. F. Hutton & Company to purchase $600,000,000 of the tax exempt bonds.

On December 7, 1979 in consideration of Alpetco entering into the aforementioned engineering and construction contract with Thyssen Rheinstahl Technik GmbH and Foster Wheeler Energy Corporation, Thyssen Rheinstahl Technik delivered a letter committing Thyssen to arrange financing of up to $750,000,000 to cover the cost for the engineering, equipment, materials, construction and other services required for the project.

By letters dated December 13, 1979 the partners of The Alpetco Company have committed, subject to certain conditions, to contribute in the aggregate $350,000,000 in equity to the Alpetco project.

Sincerely,

Gordon A. Cain

Gordon A. Cain
President

GAC/my

cc: Mr. Thomas K. Williams, Commissioner of Revenue (Juneau)
Mr. Thomas Cook, Director Division of Minerals and Energy Management (Anchorage)
Mr. Ed Park, Division of Minerals and Energy Management (Anchorage)

AGO 559905

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

December 13, 1979

Dr. Robert E. LeResche
Commissioner of Natural Resources
State of Alaska
Pouch "M"
Juneau, Alaska 99801

Dear Commissioner LeResche:

The Alpetco Company, a joint venture partnership ("Alpetco") established as of October 1, 1979, by Charter Oil (Alaska), Inc., 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 has, in our opinion, satisfied the benchmark provisions of Section 10.2(3) of the Royalty Oil Contract.

Assuming that you concur, we respectfully request that you confirm to us in writing that the provisions of Section 10.2(3) of the Royalty Oil Contract have been satisfied, and that you will give notice to the Lessees (as defined in the Royalty Oil Contract) as soon as practicable but not later than January 18, 1980, pursuant to Section 2.2 of the Royalty Oil Contract, exercising the State of Alaska's right to take its royalty oil in kind, up to 150,000 barrels per day, for sale to The Alpetco Company pursuant to the terms of the Royalty Oil Contract.

In connection with our request to initiate deliveries to us of royalty crude oil beginning July 18, 1980, we are providing with this letter commitments of the Partners that $100 million in Total Project Costs (as defined in the Royalty Oil Contract) will actually be expended within six (6) months following the date on which you give notice to the Lessees of the State's election to take royalty oil in kind for sale to us. In addition, at your request, we are also providing you a letter dated December 12, 1979 setting forth how Alpetco expects that the $100 million will be spent.

Sincerely,

THE ALPETCO COMPANY

By Gordon A Cain
Gordon A. Cain, President

AGO 559906

601 WEST 5TH AVENUE, ANCHORAGE, ALASKA, 99501, TELEPHONE 907 272-1517, TELEX 090-251157

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 Charter Oil (Alaska), Inc., 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.

Alpetco has today by letter addressed to the Commissioner of Natural Resources of the State of Alaska (the "Commissioner") notified the Commissioner of Alpetco's compliance with the benchmark provisions of Section 10.2(3) of the Royalty Oil Contract and of its request for the Commissioner to take the appropriate steps to initiate deliveries to Alpetco of crude oil in July, 1980, pursuant to the terms of the Royalty Oil Contract. Under the Royalty Oil Contract, in order for Alpetco to be entitled to delivery of crude oil, $100 million in Total Project Costs (as defined in the Royalty Oil Contract) must first actually have been expended.

The Partners have determined that in order to provide assurances to the Commissioner that at least $100 million in the expenditures for Total Project Costs will be made prior to crude oil deliveries, it would be desirable for the Partners to commit to the Commissioner pro rata in accordance with their partnership interest that such expenditures will be made.

Accordingly, the undersigned commits that by the date (the "Expenditure Date") which is six (6) months following the date on which the Commissioner gives notice to the Lessees (as defined in the Royalty Oil Contract) of the election of the State of Alaska to take royalty oil in kind

for sale to Alpetco, the undersigned will actually expend in Total Project Costs 70.0% of the excess, if any, of $100 million over the amount actually expended in Total Project Costs prior to the Expenditure Date, not to exceed $70,000,000, provided each of the other Partners performs its similar commitment pro rata in accordance with its partnership interest. The commitment of the undersigned hereunder is subject only to the Royalty Oil Contract remaining in effect with Alpetco entitled to the rights of "Buyer" thereunder and to the absence of any statute, rule or order of any governmental or judicial authority which prohibits or prevents, or any governmental or judicial action or proceeding which seeks to prohibit or prevent Alpetco from exercising the rights of "Buyer" under the Royalty Oil Contract.

The above commitment of the undersigned is made, with similar commitments of the other Partners, 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.

Attached hereto is a commitment 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 Speeedway
Houston, Texas 77098

Dear Sirs:

The undersigned, The Charter Company, is the 100% shareholder of Charter Oil (Alaska), Inc. 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. Charter Oil (Alaska), Inc. 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 $70.0 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 $30.0 million in expenditures.

To provide further assurances to the Commissioner, the undersigned commits that if, and to the extent, Charter Oil (Alaska), Inc. should fail, in whole or in part, to fulfill Charter Oil (Alaska), Inc.'s commitment relating to expenditures in accordance with its terms, the undersigned shall fulfill such commitment.

The above commitment of the undersigned is made, with similar commitments by the shareholders of the partners in Alpetco other than Charter Oil (Alaska), Inc., 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.

Yours very truly,

THE CHARTER COMPANY

By _____

AGO 559909

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 Charter Oil (Alaska), Inc., 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.

Alpetco has today by letter addressed to the Commissioner of Natural Resources of the State of Alaska (the "Commissioner") notified the Commissioner of Alpetco's compliance with the benchmark provisions of Section 10.2(3) of the Royalty Oil Contract and of its request for the Commissioner to take the appropriate steps to initiate deliveries to Alpetco of crude oil in July, 1980, pursuant to the terms of the Royalty Oil Contract. Under the Royalty Oil Contract, in order for Alpetco to be entitled to delivery of crude oil, $100 million in Total Project Costs (as defined in the Royalty Oil Contract) must first actually have been expended.

The Partners have determined that in order to provide assurances to the Commissioner that at least $100 million in the expenditures for Total Project Costs will be made prior to crude oil deliveries, it would be desirable for the Partners to commit to the Commissioner pro rata in accordance with their partnership interest that such expenditures will be made.

Accordingly, the undersigned commits that by the date (the "Expenditure Date") which is six (6) months following the date on which the Commissioner gives notice to the Lessees (as defined in the Royalty Oil Contract) of the election of the State of Alaska to take royalty oil in kind for sale to Alpetco, the undersigned will actually expend in

AGO 559910

501 WEST 5TH AVENUE, ANCHORAGE, ALASKA, 99501, TELEPHONE 907 272-1517, TELEX 090-25157

Total Project Costs 23.4% of the excess, if any, of $100 million over the amount actually expended in Total Project Costs prior to the Expenditure Date, not to exceed $23,400,000, provided each of the other Partners performs its similar commitment pro rata in accordance with its partnership interest. The commitment of the undersigned hereunder is subject only to the Royalty Oil Contract remaining in effect with Alpetco entitled to the rights of "Buyer" thereunder and to the absence of any statute, rule or order of any governmental or judicial authority which prohibits or prevents, or any governmental or judicial action or proceeding which seeks to prohibit or prevent Alpetco from exercising the rights of "Buyer" under the Royalty Oil Contract.

The above commitment of the undersigned is made, with similar commitments of the other Partners, 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.

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 Cain

ALASKA INTERSTATE COMPANY
P. O. Box 6554
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 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 shall fulfill its pro rata share of such commitment.

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.

Yours very truly,

ALASKA INTERSTATE COMPANY

By O. Charles Haney

AGO 559912

E.F. HUTTON (ALASKA) INC.
One Battery Park Plaza
New York, New York 10004
212/742-5000

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 Charter Oil (Alaska), Inc., 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.

Alpetco has today by letter addressed to the Commissioner of Natural Resources of the State of Alaska (the "Commissioner") notified the Commissioner of Alpetco's compliance with the benchmark provisions of Section 10.2(3) of the Royalty Oil Contract and of its request for the Commissioner to take the appropriate steps to initiate deliveries to Alpetco of crude oil in July, 1980, pursuant to the terms of the Royalty Oil Contract. Under the Royalty Oil Contract, in order for Alpetco to be entitled to delivery of crude oil, $100 million in Total Project Costs (as defined in the Royalty Oil Contract) must first actually have been expended.

The Partners have determined that in order to provide assurances to the Commissioner that at least $100 million in the expenditures for Total Project Costs will be made prior to crude oil deliveries, it would be desirable for the Partners to commit to the Commissioner pro rata in accordance with their partnership interest that such expenditures will be made.

Accordingly, the undersigned commits that by the date (the "Expenditure Date") which is six (6) months following the date on which the Commissioner gives notice to the Lessees (as defined in the Royalty Oil Contract) of the election of the State of Alaska to take royalty oil in kind for sale to Alpetco, the undersigned will actually expend in Total Project Costs 6.6% of the excess, if any, of $100 million over the

amount actually expended in Total Project Costs prior to the Expenditure Date, not to exceed $6,600,000, provided each of the other Partners performs its similar commitment pro rata in accordance with its partnership interest. The commitment of the undersigned hereunder is subject only to the Royalty Oil Contract remaining in effect with Alpetco entitled to the rights of "Buyer" thereunder and to the absence of any statute, rule or order of any governmental or judicial authority which prohibits or prevents, or any governmental or judicial action or proceeding which seeks to prohibit or prevent Alpetco from exercising the rights of "Buyer" under the Royalty Oil Contract.

The above commitment of the undersigned is made, with similar commitments of the other Partners, 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.

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

Very truly yours,

E.F. HUTTON (ALAKSA) INC.

By _____

EF Hutton

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 a 100% shareholder of E. F. Hutton (Alaska) Inc. 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. E. F. Hutton (Alaska) Inc. 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 $6.6 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 $93.4 million in expenditures.

To provide further assurances to the Commissioner, the undersigned commits that if, and to the extent, E. F. Hutton (Alaska) Inc. should fail, in whole or in part, to fulfill E. F. Hutton (Alaska) Inc.'s commitment relating to expenditures in accordance with its terms, the undersigned shall fulfill such commitment.

The above commitment of the undersigned is made, with similar commitments by the shareholders of the partners in Alpetco other than E. F. Hutton (Alaska) Inc., solely for the purpose of providing the Commissioner assurances that a 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.

Yours very truly,

THE E. F. HUTTON GROUP INC.

By _____

Howard M. Pack
Vice Chairman of the Board

# Seatrain Lines, Inc.

1 Chase Manhattan Plaza
New York, New York 10005

Phone: (212) 964-3400
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 owner of 100% of Barbour Oil Company, which is a 22.12% 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 as 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 shall fulfill its pro rata share of such commitment.

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.

Yours very truly,
SEATRAIN LINES, INC.

By _____

AGO 559917

# ALASKA PETROCHEMICAL COMPANY

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


December 12, 1979

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

Dear Commissioner LeResche:

According to the provisions of our Royalty Oil Contract as amended, Alpetco may purchase royalty crude oil only after 25 months have passed from the Effective Date and $100,000,000 has been expended in Total Project Costs.

The purpose of this letter is to assure you that the $100,000,000 will be spent timely so that notice will be given to the North Slope Producers in time for Alpetco to purchase the royalty crude oil immediately after 25 months have passed from the Effective Date.

The $100,000,000 will be spent in the following manner:

1. The Total Project Costs for administration, engineering, legal and environmental permitting by July 1, 1980, will exceed $25,000,000.

2. As soon as the weather allows and the necessary permits have been issued, we will start site preparation in Valdez. This will involve clearing and leveling the site, building roads and bridges, putting in dykes and drainage ditches, and building or rehabilitating the wharf to unload equipment. The total amount we expect to spend in 1980 for these purposes is $30,000,000. If we are able to start work by May 1, 1980, we expect to spend $2,600,000 of this by July 1, 1980.

3. We will spend an additional amount for one or more of the purposes listed below such that the sum of the amount spent hereunder plus the amounts spent under No. 1 and No. 2 above will exceed $100,000,000:

    a. Order and pay for long delivery items such as compressors, turbines, and electrical equipment.

AGO 559918


601 WEST 5TH AVENUE, ANCHORAGE, ALASKA 99501, TELEPHONE 907 272-1517, TELEX 090-25157

b. Order and pay for steel to be used in fabricating process equipment, tanks, and structures for the facility.

c. Buy a construction camp.

Attached are letters from the owners of Alpetco committing the $100,000,000 required to carry out the above program.

Very truly yours,

ALASKA PETROCHEMICAL COMPANY

By Gordon A Cain
Gordon A. Cain, President

AGO 559919

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

December 13, 1979

Dr. Robert E. LeResche
Commissioner of Natural Resources
Pouch "M"
Juneau, Alaska 99801

Dear Commissioner LeResche:

When negotiating the terms of its Royalty Oil Contract with the State of Alaska some two years ago, Alaska Petrochemical Company insisted on a right to begin purchasing the royalty oil prior to the time of plant start-up. As you know, we held out for this right so that we could have this crude processed into products we would eventually make in Alaska and thus begin developing market channels for them. We also maintained that we needed the opportunity to benefit from interim crude transactions in order to help the economics of building a large plant in Alaska.

While the Royalty Oil Contract does not require us to do so, we have maintained all along that profits realized from the sale or processing of the crude prior to plant start-up could be critical to the success of the project.

It is therefore with great pleasure that I attach hereto letters from the individual partners of Alpetco representing a commitment to reinvest such profits as required for equity in Alpetco.

Sincerely,

Gordon A. Cain

Gordon A. Cain
President

GAC/my

AGO 559920

601 WEST 5TH AVENUE, ANCHORAGE, ALASKA 99501, TELEPHONE 907 272-1517, TELEX 090-25157

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

December 13, 1979

The Alpetco Company
c/o Alaska Petrochemical 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.

While not required by the terms of the Royalty Oil Contract, Alaska Petrochemical Company hereby agrees to leave in Alpetco or contribute to Alpetco an amount equal to Alaska Petrochemical Company's net profits resulting from the sale and/or processing of interim crude oil by Alpetco, as required for Alaska Petrochemical Company's equity in Alpetco.

Sincerely,

ALASKA PETROCHEMICAL COMPANY

By Gordon A Cain

AGO 559921

601 WEST 5TH AVENUE, ANCHORAGE, ALASKA 99501, TELEPHONE 907 272-1517, TELEX 090-25157

CHARTER OIL (ALASKA), INC.
P. O. Box 4726
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.

While not required by the terms of the Royalty Oil Contract, Charter Oil (Alaska), Inc. hereby agrees to leave in Alpetco or contribute to Alpetco an amount equal to Charter Oil (Alaska), Inc.'s net profits resulting from the sale and/or processing of interim crude oil by Alpetco, as required for Charter Oil (Alaska), Inc.'s equity in Alpetco.

Sincerely,

CHARTER OIL (ALASKA), INC.

By _____

AGO 559922

E. F. HUTTON (ALASKA) INC.
One Battery Park Plaza
New York, New York 10004
212/742-5000

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.

While not required by the terms of the Royalty Oil Contract, E. F. Hutton (Alaska) Inc. hereby agrees to leave in Alpetco or contribute to Alpetco an amount equal to E. F. Hutton (Alaska) Inc.'s net profits resulting from the sale and/or processing of interim crude oil by Alpetco, as required for E. F. Hutton (Alaska) Inc.'s equity in Alpetco.

Sincerely,

E. F. HUTTON (ALASKA) INC.

By _____

AGO 559923

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

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

December 13, 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, 1978 (the "Agreement")

Dear Commissioner LeResche:

At our meeting with you on December 5, 1979 in Juneau, we submitted documentation which we believe satisfied all of the December 18, 1979 "Benchmarks" of the above Agreement except those relating to financia' commitments. You and your attorney, Frederick H. Boness, Esq., made comments and suggestions regarding our submission.

Today we submit the following materials:

(i) A Product Sales Contract revised to reflect Mr. Boness' comments and which, taken together with the Joint Venture Agreement, will result in payment of at least the floor price at all times after start-up.

(ii) Materials which comply with Article 10.2(3)(d) and (e) relating to the financial commitments. These materials include equity commitments from the Joint Venturers and loan commitments from various partners and other important commitments.

(iii) A revised binder which includes the above materials as well as those submitted on December 5, 1979.

(iv) A letter of even date transmitting letters from major chemical and petrochemical companies expressing interest in Alpetco's petrochemical feedstocks and possible downstream petrochemical facilities.

AGO 559924

(v) An executed copy of the Joint Venture Agreement between Alaska Petrochemical Company, Charter Oil (Alaska), Inc. and E. F. Hutton (Alaska) Inc.

Because of the Joint Venture Agreement, we request your approval to the Assignment of the Agreement from Alaska Petrochemical Company to the joint venture, The Alpetco Company.

We are also submitting, under separate cover as Volume II, notice that The Alpetco Company exercises its right to purchase the maximum quantity of State Royalty Oil available under the Agreement beginning July 18, 1980.

We believe we have successfully complied with all of the December 18, 1979 Benchmarks in the Agreement. The Alpetco Company, its partners, their attorneys and other advisors are ready to answer any questions and submit such additional information as you may require.

Very truly yours,

Gordon A. Cain

Gordon A. Cain
President

GAC:lu

Enclosures

ARTICLES 10.2(3)(a) - (h)

INDEX

| Benchmark Requirement | Date Submitted to Commissioner |
|---|---|
| (3) Within eighteen (18) months after the Effective Date: | |
| (a) Expend or commit to expend or cause contractually bound third parties to expend or commit to expend at least Ten Million Dollars ($10,000,000.00) in Total Project Costs. | 12/5/79 |
| (b) Negotiate sale terms with prospective purchasers of products from the Petrochemical Facility; delineate product requirements, production ratios and quantities for the range of products to be produced from the Petrochemical Facility; and draft contracts for the sale of products from the Petrochemical Facility. | 12/5/79 |
| (c) Enter into contracts for the sale of at least seventy percent (70%) of the product output from the Petrochemical Facility. | 12/5/79 |
| Note: Revised contract to reflect Mr. Boness' comments | 12/13/79 |
| (d) Obtain or cause contractually bound third parties to obtain written commitments to lend or invest at least One Billion Five Hundred Million ($1,500,000,000.00) in the aggregate for payment of Total Project Costs. | 12/13/79 |
| (e) Obtain a commitment or commitments for interim financing for the construction of the Petrochemical Facility. | 12/13/79 |
| (f) Complete and file an Environmental Impact Assessment on the Petrochemical Facility. | 11/19/79 |
| (g) Complete and file all material state, local and federal permit applications. | 11/19/79 |
| (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). | 12/5/79 |

AGO 559926

Article 10.2(3)(a)

"Expend or commit to expend or cause contractually bound third parties to expend or commit to expend at least ten million dollars ($10,000,000) in total project costs."

A summary schedule showing total project cost expenditures of $10,632,217.48 and contractual commitments totaling $745,012.50 for a total of $11,377,229.98 is enclosed.

Also enclosed is a copy of Peat, Marwick, Mitchell & Co.'s audit report prepared for the State of Alaska at the State's request confirming Alpetco's expenditures and contractual commitments totaling $11,377,229.98. We understand that Peat, Marwick, Mitchell & Co. has sent a copy of this audit directly to the Commissioner.

We believe that Alpetco has fully complied with this benchmark requirement.

PEAT, MARWICK, MITCHELL & Co.
CERTIFIED PUBLIC ACCOUNTANTS
4300 ONE SHELL PLAZA
HOUSTON, TEXAS 77002

State of Alaska
Department of Natural Resources
and
The Board of Directors
Alaska Petrochemical Company:

At your request, we have performed the procedures enumerated below with respect to total project costs (as defined in the Agreement for the Sale and Purchase of State Royalty Oil between Alaska Petrochemical Company and the State of Alaska dated February 22, 1978, as amended May 17, 1978) for the period January 1, 1975 through November 30, 1979. We understand that you have requested these procedures to assist you in verifying compliance with the terms of Article 10.2(3)(a) of the Agreement, and our report is not to be used for any other purpose. The procedures we performed are summarized as follows:

1. We read the Agreement and made inquiries of Alaska Petrochemical Company personnel concerning the development of total project costs information pursuant to the Agreement.

2. The Company reported to us that total project costs expended or committed to be expended as of November 30, 1979 were $11,377,229.98, as follows:

| | |
|---|---|
| Expenditures by Alaska Petrochemical Company | $ 8,480,807.36 |
| Expenditures by shareholders of Alaska Petrochemical Company | 1,151,410.12 |
| Expenditures by former project engineering firm | 1,000,000.00 |
| Commitments to expend of Alaska Petrochemical Company and/or The Alpetco Company, a joint venture formed October 1, 1979 by and among Alaska Petrochemical Company, E. F. Hutton (Alaska), Inc. and Charter Oil (Alaska), Inc. | 745,012.50 |
| | $ 11,377,229.98 |

AGO 559928

3. For the expenditures of Alaska Petrochemical Company, we examined supporting documentation, including the cash disbursements journal, cancelled checks, invoices and/or other documents for 91% ($7,688,210.10) of such project costs. The remaining 9% consisted of a large number of small dollar items.

4. For the expenditures of the direct and indirect shareholders of Alaska Petrochemical Company and the expenditures of the former project engineer, we obtained written confirmations of such project costs directly from such shareholders and project engineer.

5. For the commitments to expend, we examined executed contracts and/or unpaid invoices dated on or before November 30, 1979.

Because the above procedures were not sufficient to constitute an examination in accordance with generally accepted auditing standards, we do not express an opinion on any of the individual amounts referred to above. However, in connection with the procedures referred to above, no matters came to our attention that caused us to believe that the total project costs reported by the Company, as described herein, should be adjusted.

Peat, Marwick, Mitchell & Co.

December 3, 1979

Summary Schedule of Expenditures and

Commitments to Expend for Alpetco's Total Project Costs

Through November 30, 1979

The following total project cost data is submitted in compliance with Article 10.2(3)(a) of the Agreement.

I. Expenditures through November 30, 1979

| | | |
|---|---|---|
| (A) | Total project costs expended by Alaska Petrochemical Company for the period July 14, 1977-November 30, 1979 | $ 6,823,761.85 |
| (B) | Total project costs expended by The Alpetco Company, a partnership of Charter Oil (Alaska), Inc., Alaska Petrochemical Company and The E.F. Hutton (Alaska), Inc. for the period October 1, 1979-November 30, 1979 | $ 1,657,045.51 |
| (C) | Total project costs expended by shareholders of Alaska Petrochemical Company for the period January 1, 1975-December 18, 1979 | $ 1,151,410.12 |
| (D) | Total project costs expended by Brown and Root, Inc. (former project engineers for Alaska Petrochemical Company) | $ 1,000,000.00 |
| | Sub-total expenditures through November 30, 1979 | $10,632,217.48 |

II. Commitments to Expend at December 1, 1979

| | | |
|---|---|---|
| (A) | Contractual Commitments | |
| | (1) E.F. Hutton & Company | $ 410,000.00 |
| | (2) M.B. Carmichael - Employment Contract | 90,000.00 |
| | (3) CCC/HOK-Dowl - Accrued Retainage | 190,715.46 |
| | Sub-total, Contractual Commitments | $ 690,715.46 |

(B) Other commitments:

| | | |
|---|---|---|
| (1) | Accounts payable | $ 54,297.04 |
| | Sub-total, Other Commitments | 54,297.04 |
| | Sub-total, Commitments at December 1, 1979 | $ 745,012.50 |
| Total Expenditures and Commitments at December 1, 1979 | | $11,377,229.98 |

Note: In order to provide information to The State of Alaska prior to December 18, 1979, this report was prepared as of November 30, 1979. Expenditures and/or commitments made by the Buyer or "contractually bound third parties" from December 1 to December 18, 1979 have not been included but qualify to be included, if such is later deemed advisable. In addition, Total Project Costs have been expended, incurred or committed to be expended by the Buyer and other parties which are not included in the above summary and are not presently reported, because this amount is substantially in excess of the $10,000,000.00 required by Article 10.2 (3)(a). Buyer reserves the right to determine these expenditures at a later date, if necessary to meet benchmark requirements.

## Article 10.2(3)(b)

"Delineate product requirements, production ratios, and quantities for the range of products to be produced from the petrochemical facility; draft contracts for the sale of products from the petrochemical facility; and negotiate sale terms with prospective purchasers of products from the petrochemical facility."

A substantial amount of process optimization and market analysis by Company personnel and outside consultants has enabled Alpetco to delineate the products to be produced in the petrochemical facility. The attached schedule indicates the range of products that can be produced from the facility depending on current market requirements. As indicated, additional processing facilities are proposed in Stages II and III to further upgrade petrochemicals produced in Stage I.

We are not enclosing copies of draft contracts for the sale of products or material relating to negotiations of sale terms with prospective purchasers because we believe that the executed contract submitted in compliance with Article 10.2(3)(c) evidences full compliance with these benchmark provisions.

"...delineate product requirements, production ratios and quantities for the range of products to be producted from the Petrochemical Facility;..."

STAGE I

| Initial Product Slate | Range of Output B/D | % (Avg) | Projected 1985 Demand (B/D)* | % Demand Supplied By The ALPETCO Company |
|---|---|---|---|---|
| Unleaded Gasoline: | | | | |
| Premium | 48,100 - 63,300 | 38.1 | 847,000 | 9.4% |
| Regular | 19,300 - 28,000 | 16.2 | | |
| Jet Fuel/ Arctic Diesel | 13,600 - 34,100 | 16.3 | 599,000 | 3.4% |
| No. 4 Fuel | 10,000 - 12,000 | 7.5 | N/A | N/A |
| Clarified Oil | 4,500 - 6,000 | 3.6 | N/A | N/A |
| Subtotal Fuels | 119,450 | 81.7 | | |
| Benzene | 2,500 | 1.7 | 50,200 | 5.0% |
| Toluene | 5,600 | 3.8 | 25,200 | 22.2% |
| Xylenes | 6,200 | 4.2 | 21,900 | 28.3% |
| Paraffinic Naphtha | 11,200 - 13,700 | 8.6 | 277,000 | 4.5% |
| Subtotal Chemicals | 26,750 | 18.3 | | |
| TOTAL LIQUID PRODUCTS | 146,200 | 100.0 | | |

STAGE II

The second stage of project development will involve the upgrading of benzene and ethylene into ethylbenzene and styrene. This will require further investment in an ethylbenzene plant. In addition, propylene may be converted into oxoalcohols.

STAGE III

Depending on future market conditions, the third stage of the project will be development of an ethylene plant processing Alpetco's naphtha feedstock and/or North Slope gas liquids, if and when such liquids are available.

* Demand for fuel products was estimated by Sherman H. Clark Associates for PAD V. Demand for aromatics in Japan and on the West Coast and Japanese imports of naphtha estimated by Chem Systems, Inc.

AGD 559933

The ALPETCO Company

"...draft contracts for the sale of products from the petrochemical facility, and negotiate sale terms with prospective purchasers of products from the petrochemical facility."

Please refer to the executed product sales contract submitted in compliance with Article 10.2(3)(c) as evidence of compliance with this Article 10.2(3)(b).

AGO 559934

Article 10.2(3)(c)

"Enter into contracts for the sale of at least seventy percent (70%) of the product output from the petrochemical facility."

Enclosed is a fifteen year term product sales contract executed between The Alpetco Company and Charter Oil (Alaska), Inc. for seventy percent (70%) of the product output from the petrochemical facility. As a seventy percent partner in the project, Charter is an experienced and capable marketer of refined petroleum and petrochemical products. Charter presently markets approximately 400,000 B/D of products worldwide.

This contract has been revised since our meeting on December 5, 1979 to reflect comments made at that time by Mr. Boness.

We believe that we are in full compliance with this benchmark requirement.

• Non completion: Thyssen Co. th

• Operational risk: JV. venture agreement 4.03p20.

TABLE OF CONTENTS

# PRODUCT SALES AGREEMENT

Between

CHARTER OIL (ALASKA), INC.
a Florida corporation

and

THE ALPETCO COMPANY

---

Dated as of December 1, 1979

# PRODUCT SALES AGREEMENT

THIS AGREEMENT is made as of December 1, 1979 by and between CHARTER OIL (ALASKA), INC., a Florida corporation, ("Buyer"), and THE ALPETCO COMPANY, a Florida general partnership composed of Charter Oil (Alaska), Inc., Alaska Petrochemical Company and E. F. Hutton (Alaska) Inc., ("Seller").

This agreement documents an arrangement by which Seller will sell and deliver and Buyer will purchase petroleum products as provided herein.

NOW, THEREFORE, the parties agree as follows:

## ARTICLE I

## DEFINITIONS

1.01 As used in this agreement, the following words or phrases have the following meanings:

(a) AFRA. "AFRA" is the Average Freight Rate Assessment.

(b) ASTM. "ASTM" is the American Society for Testing and Materials.

(c) Barrel. A "barrel" is a U.S. barrel of 42 gallons measured at 60° Fahrenheit.

## ARTICLE II

## PURCHASES AND PAYMENT

2.01 Purchases. During the term of this agreement, Seller will sell and deliver to Buyer and Buyer will purchase, receive and pay for seventy percent (70%) of the Refinery's total daily output presently estimated to be the following products and associated volumes.

| Product | Approx. Volume |
|---|---|
| Unleaded Gasoline | 67,400 B/D |
| Jet Fuel/Arctic Diesel | 34,100 B/D |
| No. 4 Fuel Oil | 12,000 B/D |
| Clarified Oil | 6,000 B/D |
| Benzene | 2,500 B/D |
| Toluene | 5,600 B/D |
| Xylene | 6,200 B/D |
| Naptha | 13,200 B/D |
| Sulfur | 260 T/D |
| All other Products | |

2.02 Purchase Price. Buyer will pay to Seller a purchase price, FOB the Terminal, for all product delivered hereunder equal in amount to the higher of Market Price as defined in Section 2.02(a) below, or Floor Price as defined in Section 2.02(b) below.

(a) Market Price. The Market Price for all products delivered during a calendar month shall be equal to the sum of the Market Price for each product. The Market Price

(d) Laydays. "Laydays" are the five days upon which the parties agree pursuant to section 4.01 and set aside for a vessel's arrival at the Terminal.

(e) Refinery. The "Refinery" shall mean the refinery and petrochemical complex which Seller intends to construct at Valdez, Alaska, U.S.A.

(f) Terminal. The "Terminal" shall mean the marine loading terminal which Seller intends to construct at Valdez, Alaska, U.S.A.

(g) B/D. "B/D" means Barrels per day.

for each product delivered during a calendar month shall be equal to the posted price, herein defined for each product, less transportation cost from the posting site to Valdez, Alaska, multiplied by the volume of each product delivered.

For unleaded gasoline and diesel fuel, the posted price shall be equal to the simple average of Los Angeles, California rack prices reported for the prior month by the Lundberg Survey for the following companies: ARCO, Douglas, Gulf, Pacific, Powerine, Tosco, and USA PetroChem. The transportation cost for unleaded gasoline and diesel fuel shall be equal to the prior month's average AFRA postings for 32,000 ton clean tankers from Valdez to Los Angeles, California, plus $.50 per barrel escalated monthly using the Department of Commerce Wholesale Price Index.

For all other products, the posted price and transportation cost shall be based on independently determined public postings representative of existing market conditions and satisfactory to both parties.

(b) Floor Price. Notwithstanding anything else to the contrary herein, when the requirements of Section 5.01 have been satisfied, Buyer shall pay to Seller as and when due 70% of the sum of all of Seller's costs, expenses, obligations and liabilities including but not limited to costs, expenses, obligations and liabilities relating to the operation and maintenance of the Refinery or otherwise. Seller shall furnish to Buyer at least thirty days prior to the first delivery of product hereunder and at least ten days prior to the commencement of each calendar month thereafter an estimate

of the Floor Price for all products for the next calendar month and within twenty-five days after the end of each calendar month Seller's Floor Price on an actual basis during the preceding calendar month. If the Floor Price is higher than the aggregate amounts determined under Section 2.02(a), payments shall be made on the basis of Seller's estimate of Floor Price and shall be adjusted on the basis of the actual Floor Price when it has been determined.

If during any calendar month the Floor Price for all products exceeds the Market Price for all products and excess shall be credited to Buyer's account and shall bear interest accrued and added to principal monthly at the prime rate in effect from time to time at Chemical Bank New York from the last day of such month until utilized as a credit as hereinafter provided. During any calendar month in which the Market Price for all products exceeds the Floor Price for all products, any credit which Buyer may have in its account (including interest) will be used to pay the portion of the purchase price for all products equal to the amount by which the Market Price for all products exceeds the Floor Price.

2.03 Change in Pricing Formula. If either or both of the two postings in subsections 2.02(a) should be changed, so that the prices contemplated by those subsections no longer are available in the Lundberg Survey, the parties shall negotiate in good faith on an alternate publicly posted price to be used as the basis of pricing, and if no

such alternate is reasonably available, on a substitute pricing formula. Any cargo lacking a price as a result of a change in the postings requiring negotiations under this section shall be priced at the last price calculated pursuant to section 2.02 the day before the posting was (postings were) changed. However, if the change in the posting is descriptive only and does not affect the substance of the price reported, then the new posting shall be substituted for the old for purposes of subsections 2.02(a), and no negotiations under this section shall be necessary.

2.04 Payment. On the twentieth (20th) day of each calendar month after the first delivery of product hereunder, Seller shall furnish Buyer its estimate of the purchase price for all product to be delivered to Buyer hereunder during such calendar month. On the first day of each succeeding calendar month, Buyer shall pay to Seller the full amount of such estimated purchase price, in immediately available U.S. dollar funds, by transferring such funds to Seller's account at a bank selected by Seller. By the tenth (10th) day of each month, any adjustment necessary to reconcile the estimated purchase price and the Market Price for the prior month, pursuant to section 2.02(a), shall be made. By the twenty-fifth (25th) day of each month, any adjustment necessary to reconcile the estimated purchase price (as adjusted above) and the Floor Price for the prior month, pursuant to section 2.02(b), shall be made.

## ARTICLE III

## DELIVERY, MEASUREMENTS AND QUALITY

3.01 Delivery and Title. Deliveries of product shall be made at the Terminal into vessels provided by Buyer. Title to and risk of loss of product shall pass from Seller to Buyer as the product reaches the flange of the receiving vessel's permanent hose connection.

3.02 Quantity. The quantity of product delivered shall be determined from measurements taken of the still storage tanks before and after the delivery to Buyer's vessel. Measurements shall be adjusted to 60° Fahrenheit in accordance with ASTM Petroleum Measurements Tables (ASTM Designation S-1250, Abridged Table 7).

3.03 Quality. All products shall be of commercial quality, and shall be verified from samples taken from the still storage tanks prior to loading. All tests for quality shall be conducted in accordance with the then latest ASTM-approved methods.

3.04 Inspector. The tests for quantity and quality called for by sections 3.02 and 3.03 shall be performed by an independent petroleum inspector selected by Seller and acceptable to Buyer. The inspector shall perform

the tests in its own laboratories with its own personnel, and shall not merely certify the results of tests performed by others. The cost of the testing shall be shared equally by the parties. The determinations made by the inspector shall be final and binding on both parties.

3.05 Cargo Specifications. If Seller anticipates that a cargo of product will not meet the specifications of Exhibit 1, Seller will notify Buyer at least 72 hours prior to loading at which time Buyer shall have the right to accept or reject the cargo. In the event Buyer accepts the cargo, a new price will be negotiated at that time, but in no event shall the new price be less than the applicable Floor Price.

## ARTICLE IV

## VESSEL MOVEMENT

4.01 Forecasted Scheduling. The parties anticipate rateable cargoes of product during each month will be delivered hereunder. By the 15th day of the preceding month, Seller shall nominate separate Laydays for the cargoes to be delivered in the 1st half of the succeeding month. By the twentieth day of the preceding month, Seller shall nominate separate Laydays for the cargoes to be delivered in the last half of the month. In each case Buyer shall accept or reject the nomination, and if it rejects it, the parties shall select alternate Laydays. When the Laydays have been selected, Buyer shall notify Seller of the size of the cargo pursuant to section 2.01.

4.02 Naming of Vessels. Buyer shall, in conformity with the Laydays, identify each vessel by notice to Seller given in writing at least seven days in advance of the commencement of the Laydays, stating the name and size of the vessel to be loaded and giving full instructions regarding it. If a ship's schedule is disrupted, Buyer shall notify Seller immediately of any change in its expected arrival date; but such notice shall not modify the Laydays agreed upon pursuant to section 4.01 unless Seller agrees to a change.



AGO 559947

4.03 Arrival Notice. Buyer shall give (or cause to be given) Seller written notices of the expected day and hour of arrival of each vessel at least 72, 48 and 24 hours before arrival.

4.04 Notice of Readiness. Upon arrival at customary anchorage in Valdez, the master or his agent shall give Seller notice that the vessel is ready to load cargo, berth or no berth, whenever that may be so. If such notice is given within the Laydays, laytime shall commence six hours after receipt by Seller of such notice, or when the vessel is all fast at the Terminal, whichever first occurs. If the notice of readiness is given prior to the beginning of the Laydays, Seller may accept the vessel if it wishes, but has no obligation to do so until the first of the Laydays; but if Seller does accept the vessel, laytime shall commence when the vessel is all fast at the Terminal. If the notice of readiness is given after the last of the Laydays, Seller shall use its best efforts to berth the vessel as soon as possible after notice of readiness is given, but Seller shall not be liable for any demurrage incurred while the vessel is waiting to berth. However, where delay is caused to the vessel getting into berth after giving notice of readiness for any reason over which Buyer or Seller have no control, such delay shall not count as used laytime.

4.05 Laytime. There shall be allowed as laytime for loading 36 hours. Any delay in loading due to the vessel's condition or breakdown or inability of the vessel's facilities to load cargo within the time allowed shall not count as used laytime. If regulations of Seller or of port authorities prohibit loading of the cargo at night, time so lost shall not count as used laytime. If Buyer prohibits loading of the cargo at night, time so lost shall count as used laytime.

4.06 When Laytime Ends. Laytime shall end when the delivery hoses are disconnected after completion of loading or when the vessel is released by Seller or its agent, whichever last occurs.

4.07 Demurrage. Seller shall pay Buyer demurrage per running hour, prorata for a part thereof, of laytime used in excess of allowed laytime as set forth herein at the rate set forth in AFRA in effect on the date of loading for the size vessel being loaded in the case of vessels on term charter to Buyer, and at the rate set forth in the charter party for vessels under spot charter. If, however, demurrage shall be incurred by reason of fire, explosion or

storm, or by a strike, lockout, stoppage or restraint of labor, or by breakdown of machinery or equipment in or about the Refinery or Terminal, the rate of demurrage shall be reduced one-half for demurrage so incurred. Seller shall not be liable for any demurrage for delay caused by strike, lockout, stoppage or restraint of labor of master, officers and crew of the vessel or tugboats or pilots.

4.08 Berth. Seller shall provide a safe berth for Buyer's vessels free of all wharfage, dockage and quay dues, and of sufficient depth to permit Buyer's vessels to always lie safely afloat at all times of tide, and which such vessel can at all times safely reach and leave.

## ARTICLE V

## TERM AND TERMINATION

5.01 Term. The term of this agreement shall commence on the date of the first cargo loading after completion of the Refinery and Terminal and continue f[redacted] thereafter p[redacted]t this agreement is subject to Buyer's final approval of definitive documents relative to long-term loan of funds for the Refinery, the Terminal and related facilities and to the execution by December 18, 1980 of such documents by Alpetco and the lenders providing such funds.

5.02 Default. If Buyer defaults in the performance of any of its obligations hereunder, Seller may give Buyer written notice of such default, and if such default is for the payment of money and it is not cured within ten days thereafter, or if such default is other than for the payment of money, and such default is not cured within thirty days thereafter Seller may either (a) take such legal action against Buyer as Seller may deem appropriate to enforce Seller's rights and Buyer's obligations hereunder and to recover any damages which Seller may have suffered by reason of Buyer's default, or (b) terminate this agreement by written notice to Buyer. In the event Seller defaults in the performance of any of its obligations hereunder, Buyer may take such legal action it deems appropriate to enforce Buyer's rights and Seller's obligations hereunder, but in no event shall Buyer's remedies include the right to terminate this agreement.

5.03 Further Action. Upon expiration of this a ee-ment, the parties shall continue to be obligated to take such further action as is reasonable to account fully each to the other, and to be obligated to deliver such documents as reasonably may be required to effectuate the purposes of this agreement, in order to carry to conclusion the transactions contemplated hereunder and promptly to settle the accounts between them.



AGO 559952

## ARTICLE VI

## FORCE MAJEURE

6.01 Excused by Law. No failure or omission to carry out or to observe any of the terms, provisions or conditions of this agreement except such failure or omission caused by or resulting from economic duress shall give rise to any claim by one party against the other, or be deemed to be a breach of this agreement, if such failure or omission is excused by law.

6.02 Matters or Things. No failure or omission by Seller to carry out or to observe any of the terms, provisions or conditions of this agreement shall give rise to any claim by Buyer or be deemed to be a breach of this agreement, if such failure or omission is caused by a matter or thing not within the control of Seller and Seller is not able to overcome such matter or thing by the exercise of due diligence. By way of illustration, but not by way of limitation, the following are matters or things embraced by the foregoing definition: war (whether declared or not, and whether or not involving the United States), hostilities, blockade, acts of the public enemy or of belligerents; sabotage, insurrection, riot or disorder; arrest or restraint of peoples; embargoes, export or import restrictions or rationing or allocation (whether imposed by law, decree or regulation, or by voluntary cooperation of industry at the instance or request of any government or person(s) purporting to act therefor); interference [redacted] (whether civil or military, whether de jure or de facto, and whether purporting

to act under some constitution, decree, law or otherwise); failure or refusal of any government, governmental agency or organization owned or controlled by any government, to supply oil; act of God, fire, earthquake, storm, lightning, ice, tidal wave or perils of the sea; loss of tanker tonnage due to sinking by belligerents or to governmental taking (whether or not by formal requisition); barratry of the master and/or crew, collisions, strandings, accidents of navigation or breakdown or injury of vessels, and all dangers or accidents of the seas, canals or rivers and the navigation of vessels or whatever nature even when occasioned by negligence, default or error in judgment of the pilot, master, mariners, seamen or other servants of the vessel's owners; deviation of vessels to save life or property; accidents to or closing of harbors, docks, canals, channels or other assistance to or adjuncts of shipping or navigation; epidemic or quarantine; strikes or combinations of workmen, [redacted] f wells, pipes, storage facilities, refineries, installations, machinery or other facilities; unavailability of feedstock or necessary products; unavailability of materials or equipment; the failure of a manufacturing facility to operate for any reason beyond the reasonable control of the party which owns or operates such facility; shutdown of plant required for prudent maintenance.

6.03 Unreasonable Demands of Labor. Nothing in this Article VI shall be construed to require Seller to accede to demands of labor or labor organizations which it considers unreasonable in its absolute discretion.

6.04 Time Lost by Force Majeure. At the option of Seller the term of this agreement shall be extended for a period of time equal to any period that Seller's performance hereunder was excused by the provisions of Sections 6.01 and 6.02; provided Seller gives Buyer notice of such election within sixty days after the cessation of such excused performance.

## ARTICLE VII

## ASSIGNMENT

7.01 Assignment by Seller. Seller may at any time (and without the consent of Buyer) pledge, mortgage, collaterally assign, grant a security interest in or otherwise hypothecate all or any portion of its rights under this agreement, but only for the purpose of providing the security deemed necessary by Seller in order to finance the cost of constructing the Refinery and Terminal and related working capital. Except as provided above, Seller shall not pledge, mortgage, assign, grant a security interest in or otherwise transfer or hypothecate all or any portion of its rights or obligations hereunder without the prior written consent of Buyer.

7.02 Assignment by Buyer. Buyer may at any time (and without the consent of Seller) assign all or any portion of its rights under this agreement to any corporation, all the outstanding stock of which is owned by Buyer or a corporation which owns directly or indirectly all the outstanding stock of Buyer. Notwithstanding any such assignment, Buyer shall remain liable hereunder for all its obligations unless specifically released by Seller. Except as provided above, Buyer shall not pledge, mortgage, assign, grant a security interest in or otherwise transfer or hypothecate all or any portion of its rights or obligations hereunder without the prior written consent of Seller.

## ARTICLE VIII

## PROVISIONS OF GENERAL APPLICATION

8.01 Waiver. Failure of either party to insist upon strict observance of or compliance with all of the provisions of this agreement in one or more instances shall not be deemed to be a waiver of its rights to insist upon observance or compliance with the other provisions hereof, or of the same provision on a subsequent occasion.

8.02 Choice of Law. This agreement shall be governed by and construed in accordance with the laws of the State of Alaska.

8.03 Amendment. This agreement may be amended only in a writing signed by the party to be bound.

8.04 Headings and Sections. The headings contained in this agreement are for convenient reference only, and shall not in any way effect the meaning or interpretation of this agreement. All references to sections are to sections of this agreement, unless the context indicates otherwise.

8.05 Written Notices. All notices required or permitted hereunder shall be in writing and shall be deemed properly given only when received by the party to be served. Notices may be transmitted by TWX or Telex, or United States mail, and addressed as follows:

To Buyer:

Charter Oil (Alaska), Inc.
P. O. Box 4726
Jacksonville, Florida 32202
Telex 568415

To Seller:

The Alpetco Company
3700 Buffalo Speedway, Suite 806
Houston, Texas 77098
Telex 791461

Either party may change its address for purposes of this section by giving written notice to the other of such change in the manner herein provided.

IN WITNESS WHEREOF, the parties hereto have executed this agreement in multiple originals as of the day and year first above written.

CHARTER OIL (ALASKA), INC.

By _____
Title President

THE ALPETCO COMPANY

By Gordon A Cain
Title President



AGO 559958

EXHIBIT I

# PRODUCT SPECIFICATIONS

## 1. BENZENE; TOLUENE, XYLENE

| | |
|---|---|
| Benzene | ASTM D835-77 |
| Toluene | ASTM D841-77 |
| Xylene | ASTM D845-71 |

## 2. PARAFFINIC NAPHTHA

Blended Raffinate from Sulfolane BTX extraction plus n-pentane/isohexane from naphtha prefractionation.

| | |
|---|---|
| RVP, psia | 9 Max. |
| Sulfur, wt. % | 0.05 Max. |
| Distillation, °F | |
| Initial Boiling point | 90 Min. |
| 50% | 205 Min. |
| End point | 360 Max. |
| Olefins, Vol. % | 1 Max. |
| Aromatics, Vol. % | 6.5 Max. |
| Color, Saybolt | 25 Min. |

## 3. GASOLINE

(Must meet Los Angeles Basin gasoline specifications.)

| | | Premium | Regular |
|---|---|---|---|
| Octane | $\frac{R + M}{2}$ | 92 | 89 |
| RVP | Max. | 11.5 | 11.5 |
| | Min. | 7.0 | 7.0 |
| Bromine Number | | 30 Max. (ASTM D-1159) | 30 Max. |

## 4. JET FUEL (JET A-1)

| | |
|---|---|
| Acidity, total max. mg KOH/g | 0.1 |
| Aromatics, vol., max., % | 25 |
| Sulfur, Mercaptan, wt., max. % | 0.003 |
| Sulfur, total wt., max., % | 0.125 |
| Distillation temperature, °F | |
| 10% recovered, max. temp. | 400 |
| Final boiling point, max. °F | 572 |
| Flash point, min., °F | 123 |
| Gravity, max., °API (Min., sp gr) at 60° F | 51 (0.7753) |

| | |
|---|---|
| Gravity, min. °API (max., sp gr) at 60°F | 37 (0.8398) |
| Freezing point, max. (°C) | (-50) |
| Viscosity -30°F(-34.4°C) max., cSt. | 15 |
| Net heat of combustion, min., Btu/lb. | 18400 |

5. DIESEL (ARCTIC SPECIFICATION)

| | |
|---|---|
| Flash point, °F | 140 Min. |
| Cloud point, °F | -60 Max. |
| Kin. Vis. at 100°F., CS | 1.2-2.5 |
| ASTM Distillation, °F | |
| 90% Evaporated at | 550 Max. |
| End point | 572 Max. |
| Carbon residue on 10% Btms. | 0.1 Max. |
| Sulfur, Wt. % | 0.2 Max. |
| Water + Sediment, Wt. % | 0.01 Max. |
| Insolubles, Mg/100 ML | 1.5 Max. |
| Neutralization No., TAN | 0.05 Max. |
| Particulate Mg/L | 8 Max. |
| Cetane No. | 45 Min. |

6. NO. 4 FUEL

| | |
|---|---|
| Flash point, °F | 130 Min. |
| Pour point, °F | 20 Max. |
| Water + Sediment, Vol. % | 0.5 Max. |
| Kin. Vis. at 100° F., cST | 5.8 to 26.4 |
| Sulfur, Wt. % | 0.3 Max. |

7. CLARIFIED OIL

Following is the specification for Carbon Black Feedstock. If Clarified Oil is not suitable, it will be sold as Bunker C.

| | |
|---|---|
| Bureau of Mines Correlation Index (1) | 120 Min. |
| API Gravity at 60°F | 3.0 Max. |
| Ash, % | 0.06 Max. |
| Sediment, % | 0.2 Max. |
| Sulfur, % by Wt. | 2.25 Max. |
| Asphaltenes, % by Wt. | 5 Max. |
| Sodium, ppm | 10 Max. |
| Potassium, ppm | 1 Max. |
| SSU Viscosity at 210°F | 70 Max. |
| Initial Boiling Point, °F | 400 Min. |

(1) $BMCI = \frac{87,552}{°R} + 473.5 \left(\frac{1}{s.g.}\right) - 456.8$

Where °R = average volumetric boiling point in °F., corrected to 760 mmHg pressure, plus 460

s.g. = specific gravity

8. SULFUR

| | |
|---|---|
| Purity, Wt. % | 99.8 Min. |
| Color | Bright Yellow |

9. COKE

| | |
|---|---|
| Sulfur, Wt. % | 1.8 Max. |
| Nickel, ppm | 9,350 |
| Vanadium, ppm | 19,890 |

The Charter Company
206 Laura Street · Post Office Box 2017
Jacksonville, Florida 32231
Telephone 904-356-4111 · 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 entered into a Product Sales Agreement dated as of December 1, 1979, (the "Sales Agreement").

In support of Charter Oil (Alaska), Inc.'s obligations under the Sales Agreement the undersigned, if required by the lenders providing funds as long-term loans for Alpetco's refinery and petrochemical project in Alaska, commits to take such actions as are necessary to cause Charter Oil (Alaska), Inc. to fulfill its obligations under the Sales Agreement subject to final approval by the undersigned of definitive documents relating to such long-term loans 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 obligations under the Sales Contract and is not intended for the benefit of any person other than Charter Oil (Alaska), Inc.

Very truly yours,

THE CHARTER COMPANY

By: _____

AGO 559962

## Article 10.2(3)(d)

"Obtain or cause contractually bound third parties to obtain written commitments to lend or invest at least One Billion Five Hundred Million ($1,500,000,000.00) in the aggregate for payment of Total Project Costs."

Alpetco has obtained written commitments for $1.7 billion for payment of Total Project Costs. The issuers of the commitments and the amounts of each are as follows:

| | |
|---|---|
| Thyssen Rheinstahl Technik GmbH | $ 750,000,000.00 |
| City of Valdez | 600,000,000.00 |
| Partners of The Alpetco Company | 350,000,000.00 |
| | $1,700,000,000.00 |

This amount represents the total anticipated long term financing requirements for the Project. Attached and separately tabbed are letters and related documents to substantiate these financing commitments.

We believe that Alpetco has fully complied with this benchmark.

Thyssen Rheinstahl Technik GmbH - $750,000,000.00

On December 7, 1979 Alpetco entered into an agreement with Thyssen Rheinstahl Technik GmbH (Thyssen) and Foster Wheeler Energy Corporation (Foster Wheeler) for engineering and construction of Alpetco's refinery and petrochemical facility. In consideration of this agreement, Thyssen has given Alpetco its commitment to arrange financing of up to $750,000,000.00.

Thyssen is a member of the Thyssen Group, one of the world's largest industrial corporations, with assets in excess of $8 billion. Headquartered in Dusseldorf, West Germany, Thyssen is experienced in financing and constructing major industrial facilities including refining and petrochemical facilities on a worldwide basis. Thyssen's capability to finance, construct and guarantee this project is underscored in a reference letter from Deutsche Bank, one of the world's largest commercial banks in which Deutsche Bank states:

> "THYSSEN RHEINSTAHL TECHNIK GMBH ranks with our most esteemed customers, we know this Company to be capable of accomplishing and financing the projects it undertakes and we further know it would not enter into liabilities it could not meet."

Included under this tab is Thyssen's commitment letter, Deutsche Bank's letter of reference and the Engineering and Construction Contract executed on December 7, 1979 between Thyssen, Foster Wheeler and Alpetco.

In addition to the above financial commitments of Thyssen, the Engineering and Construction Contract with Thyssen and Foster Wheeler also adds significant other strengths to the viability of the Project. The Thyssen/Foster Wheeler agreement:

1. Eliminates the risk of cost overrun by giving Alpetco a fixed price for construction.

2. Eliminates the risk that construction will not be completed by giving Alpetco a completion guarantee.

3. Eliminates the risk that the facility will not operate by giving Alpetco a performance guarantee.

THYSSEN

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 | Unser Hausruf (Direktwahl) (02 11) 38 03 - | Düsseldorf |
|---|---|---|---|---|
| | | Recht/Dr.W./ho | | 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.



AGO 559965

Geschäftsführung: Dr. Helmut Gaschwend (Vorsitzender)
Handelsregister-Nr.: HR B 3311

"best efforts." ?

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.

No obligation if ff. non-recourse agreement fails
ie: Still contingent on eventual (Alpetco) economics

**Deutsche Bank**
Aktiengesellschaft

To whom it may concern

Filiale Düsseldorf

Postanschrift/Postal Address/Adresse
Postfach/P. O. Box/Boite Postale 11 17
D-4000 Düsseldorf 1
Telephon: (02 11) 88 31
Telex: 8 582 586
Telegramme/Cables/Télégrammes:
deutschbank

| Bitte in der Antwort angeben<br>Please quote/Prière d'indiquer | Ihre Zeichen und Nachricht vom<br>Your reference and date/Votre référence et date | Durchwahl/Direct line/Ligne directe | Datum<br>Date |
|---|---|---|---|
| Garantien sey/bö | | 883 376 | 9th February, 1978 |

## Reference

Since many years THYSSEN RHEINSTAHL TECHNIK GMBH, Düsseldorf, is experienced in the turn-key implementation of refineries, petro-chemical plants, gas-, oil- and water-pipelines and supplies also complete plants including know-how and engineering for iron-, steel-, raw materials-industry as well as other technical goods and machinery for various industries throughout the world.

THYSSEN RHEINSTAHL TECHNIK GMBH ranks with our most esteemed customers, we know this Company to be capable of accomplishing and financing the projects it undertakes and we further know it would not enter into liabilities it could not meet.

Deutsche Bank AG

Fussangel Janssen

AGO 559967

"binding"

This Contract effective as of 7th day of December , 1979, between, on the one hand,

THYSSEN RHEINSTAHL TECHNIK GMBH
having its registered office in Düsseldorf,
Federal Republic of Germany,
and hereinafter called "THYSSEN",

and

FOSTER WHEELER ENERGY CORPORATION
having an office in Houston, Texas/USA,
and hereinafter called "FOSTER WHEELER",

and on the other hand

THE ALPETCO COMPANY, - 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.- , having an office in Houston, Texas/USA, and hereinafter called "ALPETCO"

W I T N E S S E T H

WHEREAS, ALPETCO desires to have constructed a grass roots 150,000 BPCD crude oil refinery and petrochemical facility on property provided by ALPETCO located at Valdez, Alaska, together with financing arrangements for implementation of said construction, hereinafter called the "PROJECT" and

WHEREAS, FOSTER WHEELER AND THYSSEN have entered into a Joint Venture Agreement to associate themselves under the name of FOSTER WHEELER-THYSSEN, Joint Venture, hereinafter called "JOINT VENTURE", for the purpose of implementing the PROJECT on the basis of this contract with ALPETCO, hereinafter referred to as "CONTRACT" and

WHEREAS, the JOINT VENTURE has responded to ALPETCO's request and has proposed to ALPETCO a procedure, as outlined in this Contract; and

WHEREAS, ALPETCO desires the JOINT VENTURE to undertake certain services hereinafter referred to as "WORK" to develop a fixed price for the turnkey construction of the PROJECT, and to implement the Project; and

WHEREAS, the JOINT VENTURE desires so to do,

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

1.0 SERVICES BY JOINT VENTURE

The JOINT VENTURE shall in accordance with the provisions of this Contract:

1.1 Perform such engineering design and related activities as is necessary to prepare a fixed price for the implementation of the PROJECT.

1.2 Perform with the cooperation of ALPETCO, required activities for development of a Project Labor Agreement with appropriate labor unions to enable JOINT VENTURE to obtain firm quotes from sub-contractors.

1.3 Develop a time schedule for completion and start-up of the PROJECT.

1.4 Obtain all permits and licenses necessary for the performance of JOINT VENTURE's services which are required to be obtained in the name of JOINT VENTURE.

AGO 559969

1.5 Provide engineering specifications acceptable to and not now available from ALPETCO.

2.0 SERVICES BY ALPETCO

ALPETCO shall perform the following services in connection with WORK to be performed under this CONTRACT without cost to JOINT VENTURE. Such services shall include but be not limited to the following:

2.1 Provide any necessary basic design data, engineering reviews and approvals and any other engineering services not to be provided by JOINT VENTURE under Article 1.0. This shall include necessary soil bearing data and foundation design criteria, topographic survey, and proper benchmarks for design and construction.

2.2 Procure all necessary permits, licenses, easements, rights of way, and real property for the construction and operation of the plant other than permits and licenses to be provided by the JOINT VENTURE under subsection 1.4.

2.3 ALPETCO will make available as required by the JOINT VENTURE, the information requested by the JOINT VENTURE resulting from the license agreements and ALPETCO will conclude any license agreements for process licenses by third parties.

2.4 ALPETCO will negotiate and finalize commitments on long term marketing of products from customers at terms and conditions which are acceptable to lending institutions as a collateral for the financing if necessary.

AGO 559970

2.5 ALPETCO will arrange the interim construction financing and will cooperate with the JOINT VENTURE in arranging the long term financing. ALPETCO will arrange for the issuing of the City of Valdez Industrial Revenue Bonds.

2.6 Activities specified in 2.1 through 2.4 will be finalized on or before finalization of the JOINT VENTURE's activities as specified in 1.0.

3.0 FIXED PRICE CONTRACT

The parties shall promptly negotiate and finalize by March 31, 1980, the terms and conditions of the definitive Fixed Price Contract. On or before September 1, 1980, the JOINT VENTURE shall propose

a) a fixed price for the project implementation

b) a contractual guarantee for timely completion of the plant,

c) a contractual performance guarantee

and if accepted by ALPETCO within three months, the definitive Fixed Price Contract shall become effective.

4.0 COMPENSATION

ALPETCO shall pay the JOINT VENTURE in the manner and at the times designated in Article 5.0 below the costs and charges specified in attached Annex 1.

5.0 TERMS OF PAYMENT

The JOINT VENTURE shall invoice ALPETCO monthly for costs and charges incurred pursuant to Article 4.0 and ALPETCO shall pay the JOINT VENTURE ten days after presentation of respective invoices all costs and charges incurred by the JOINT VENTURE as per Annex 1 in US-Dollars.

6.0 TERMINATION

6.1 Either party may terminate this Contract under any of the following circumstances:

(i) The Royalty Crude Oil Contract is for any reason terminated or ALPETCO ceases for any reason to be able to receive crude oil in quantities commensurate with the Project,

(ii) The other party fails to perform its obligations under this Contract.

In the event of such termination ALPETCO shall pay to the JOINT VENTURE the amounts specified in Article 5. ALPETCO agrees to release, hold harmless and indemnify the JOINT VENTURE, FOSTER WHEELER, THYSSEN, or their affiliates from any loss, cost, damages or against any claims thereof resulting from ALPETCO's, its successors' and assigns' or any third party's use of such drawings, specifications or other data delivered to ALPETCO pursuant hereof. The provisions of this paragraph will survive the termination or expiration of this Contract.

6.2 If this Contract terminates, or if the Contract expires without having been replaced by the fixed Price Contract, then Thyssen's letter dated December 7, 1979, shall become null and void without any liability thereunder.

## 7.0 PERIOD OF PERFORMANCE AND VALIDITY OF CONTRACT

7.1. It is presently estimated (but the JOINT VENTURE does not guarantee) that the WORK will be completed by the JOINT VENTURE by September 1, 1980, provided that ALPETCO timely furnishes the information required in Article 2.0 above.

7.2 The validity of this Contract expires three (3) months from the submission of the fixed price to ALPETCO by the JOINT VENTURE.

7.3 If the validity of the Contract expires neither the JOINT VENTURE nor ALPETCO shall have the right of claim against the other party as a consequence of the expiration of this Contract other than those rights expressly agreed upon in this Contract.

## 8.0 JAPANESE PARTICIPATION

It is contemplated that the JOINT VENTURE will subcontract with Japanese companies acceptable to ALPETCO for the supply of components and services for the PROJECT including transportation to the jobsite.

## 9.0 REPRESENTATIONS

ALPETCO represents that it undertakes this Contract on an exclusive basis, i.e., ALPETCO will not implement the PROJECT with third parties, unless the JOINT VENTURE will have given its consent or either party will have terminated this Contract pursuant to Article 6.0.

AGO 559973

10.0 WARRANTEES

10.1 ALL WORK performed by the JOINT VENTURE under this Contract which requires correction and ALPETCO having so indicated to the JOINT VENTURE shall be corrected by the JOINT VENTURE provided ALPETCO requests such correction within thirty (30) days after submission of the fixed price to ALPETCO by the JOINT VENTURE. The JOINT VENTURE's responsibility shall be limited solely to redoing its own and subcontractor's own WORK.

10.2 The JOINT VENTURE's warrantees and guarantees stated herein are exclusive and in lieu of all other warranties and guarantees, whether written or oral or implied in the fact or in law, and whether based on statute, contract, tort (including negligence) strict liability or otherwise.

11.0 ACCOUNTING

11.1 The JOINT VENTURE shall keep full and detailed accounts and records in accordance with its established accounting procedure.

11.2 The JOINT VENTURE shall submit to ALPETCO by February 1, 1980 a forecast of monthly expenditures under this Contract.



AGO 559974

11.3 The JOINT VENTURE shall permit ALPETCO to have access to and currently to review and audit at all reasonable times all records and accounts relating to costs reimbursable by ALPETCO under this Contract exclusive, however, of any fi xed overlays or fixed rates. If as a result of any review or audit the invoices and statements submitted in accordance with Article 4.0 are found to be in error, such errors shall be adjusted in the next subsequent invoices. Such audits may be made as work progresses and final audit shall be completed within 60 days after completion of the services as provided for herein.

12.0 INSURANCE

The partners of the JOINT VENTURE shall maintain during the performance of the WORK hereunder the insurance required by the applicable jurisdictions.

13.0 BROWN & ROOT, INC.

Prior to the date hereof, BROWN & ROOT, INC. has performed certain services ("B&R SERVICES"). On behalf of ALPETCO in connection with the initial B&R SERVICES, ALPETCO shall defend, indemnify and hold harmless JOINT VENTURE claims, demands, liabilities, damages and courses of action of any nature whatever arising out of or incidental to such B&R SERVICES.

14.0 CONSEQUENTIAL DAMAGES

Notwithstanding anything in this Contract to the contrary, it is agreed that neither party to this Contract, their affiliates and subcontractors shall have no liability, whether in contract, tort, strict liability or otherwise, for loss of product, loss of profit, loss of use or any other indirect or consequential damages.

15.0 GOVERNING LAWS

This Contract will be governed and interpreted under the laws of the State of Florida.

16.0 ENTIRE AGREEMENT/AMENDMENTS

16.1 This Contract and THYSSEN's letter dated December 7, 1979 constitute the entire agreement between the parties hereto relating to the services and supersedes any previous agreement or understanding relating to the services, and shall not be altered or amended except by the written agreement of the parties.

16.2 The validity of this Contract shall not be affected should one or more of its stipulations be or become legally invalid. In such case the invalid clause shall be replaced by a stipulation which is in accordance with the law and which shall be as close as possible to the parties' original intent.

17.0 NOTICES

17.1 All notices required under this Contract shall be in writing and shll be sufficient in all respects if delivered in person or sent by registered mail addressed to :

Foster Wheeler /Thyssen Joint Venture

c/o Thyssen Rheinstahl Technik GmbH
Attention: Mr. Wolfgang Schwarze

Königsallee 106
Postfach 80 23

D 4000 Düsseldorf

and if ALPETCO shall be sufficient in all respect if delivered in person or sent by registered mail addressed to

The Alpetco Company

Attention: Mr. Gordon Cane

3700 Buffalo Speedway, Suite 806

Houston, Texas 77098

17.2 Either party may change the person/or address to which notice shall be given by giving the other party written notice of such change.

IN WITNESS WHEREOF the parties have executed this Contract on the date first written above.

The Alpetco Company

Joint Venture

Thyssen Rheinstahl Technik GmbH

Foster Wheeler Energy Corporation

ANNEX I

COMPUTATION OF JOINT VENTURE'S COSTS

The JOINT VENTURE will charge their costs to ALPETCO on a cost reimbursable basis including but not limited to:

1. Wages and Salaries

   The wages and salaries, for such time as is devoted to the PROJECT by home office personnel, whether such services are performed in the office abroad, or in the field for personnel such as, but not limited to, managers, engineers, designers, draftsmen, purchasers, expeditors, project accountants, secretaries.

2. Payroll Burdens

   An amount equal to seventy percent (70%) for THYSSEN and an amount equal to forty-five percent (45%) for FOSTER WHEELER's total wages and salaries for payroll burdens to cover the costs of payroll taxes and insurance, group medical and life insurance, as well as pro rata share of the cost to employer of vacation, sick benefits, holiday pay and other employee benefits.

3. Indirect Costs

   An amount equal to one hundred percent (100%) for THYSSEN and an amount equal to one hundred percent (100%) for FOSTER WHEELER's total wages, salaries and payroll burden costs reimbursable in accordance with the sum of section 1. and 2. to cover for the related overhead and indirect office costs.

4. Transportation, Relocation and Travel Expenses

   The cost of transportation, relocation, and travel expenses for personnel engaged in the project in accordance with established policies.

5. Communication Expenses

   Long distance telephone, telegraph, postage, and teletype expenses incurred in the direct prosecution of the project at cost.

6. Prints and Reproduction

   Prints and reproductions in accordance with established rates.

7. Computer Services

Computer services for the prosecution of technical and commercial programs in accordance with established rates.

8. Third Party Services

Services performed by a third party, such as financial and legal advisers, soil investigation, etc., at cost.

9. Miscellaneous Expenses

Miscellaneous expenses, including, but not limited to, custom printed forms, special book bindings, special drafting room and office materials and supplies, model shop material, freight, express, duties, fees, permits, and any other cost incurred in connection with the project.

City of Valdez, Alaska - $600,000,000.00

On November 19, 1979 the City of Valdez unanimously passed Ordinance 7917 authorizing the City to issue tax exempt industrial revenue bonds to finance the Alpetco project. Also, on November 19, 1979 the City Council unanimously passed Resolution 7953 authorizing the Mayor of Valdez to execute a commitment to lend Alpetco $600,000,000.00 from the proceeds of the sale of tax exempt industrial revenue bonds.

To support this commitment, the City of Valdez has obtained an underwriting commitment, dated November 19, 1979, from E. F. Hutton & Company to purchase $600,000,000.00 of the tax exempt bonds.

Copies of the City Ordinance 7917, Resolution 7953, the City's commitment letter and E. F. Hutton's underwriting commitment follow.

AS 37.10.035

Emergency / 60 days

CITY OF VALDEZ, ALASKA

ORDINANCE NO. 7917

AN ORDINANCE OF THE CITY OF VALDEZ, ALASKA, CREATING ARTICLE II, CHAPTER 9, OF THE VALDEZ CITY CODE ESTABLISHING PROCEDURES FOR ISSUING ECONOMIC DEVELOPMENT BONDS AND MATTERS RELATED THERETO

WHEREAS, the City of Valdez, Alaska is a home rule city and under Section 11 of Article X of the Alaska Constitution may exercise all legislative powers not prohibited by law or by the Charter of the City, and it has been determined that the matters set forth in this Ordinance are not prohibited by law or the Charter; and

WHEREAS, it is necessary and for the best interests of the City to provide employment opportunities and to encourage the economic development of the City, thereby reducing the evils attendant upon unemployment and furthering the welfare and prosperity of the residents of the City; and

WHEREAS, the issuance of revenue bonds to finance in whole or in part the costs of the acquisition, purchase, construction, reconstruction, improvement, equipping, betterment, extension, addition, repair, alteration, rehabilitation, renovation or enlargement of economic development facilities as aforesaid is a public purpose and is a proper exercise of a governmental function of the City; and

WHEREAS, the establishment of procedures for the issuance of such revenue bonds is authorized by the Charter including, but not limited to, Section 14.8, and is necessary and desirable to provide clarity in law and direction for subsequent actions;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF VALDEZ, ALASKA, THAT:

Section 1. Article II, Chapter 9 of the Valdez City Code is hereby created to read as follows:

ARTICLE II - ECONOMIC DEVELOPMENT BONDS

Sec. 9-40. Definitions. Whenever used in this Article unless a different meaning clearly appears from the context:

(1) "bonds" means revenue bonds issued as herein provided.

(2) "Charter" means the Charter of the City as from time to time amended and supplemented.

(3) "City" means the City of Valdez, Alaska.

(4) "construction" of or with respect to a project means and includes the acquisition, purchase, construction, reconstruction, improvement, equipping, betterment, extension, addition, repair, alteration, rehabilitation, renovation or enlargement of the project.

(5) "impact aid payment" or "administrative fee" means the impact aid payment or administrative fee pursuant to Section 9-54 of this Article.

(6) "person" means any individual, partnership, co-partnership, firm, company, corporation (including a public utility), association, joint stock company, trust estate, political subdivision, state agency, or any other legal entity, or its legal representative, agent or assigns.

(7) "project" means any land, building, structure, facility, system, fixture, improvement, addition, appurtenance, machinery and equipment, and any real and personal property deemed necessary in connection therewith, including but not limited to machinery and equipment whether or not now in existence or under construction, which shall be suitable for any of the following:

(a) Any enterprise for the manufacturing, processing or assembling of any agricultural, manufactured or natural resource product.

(b) Any commercial enterprise for the storage, warehousing, distributing, selling or providing of products or services and including research and development therefor.

(c) Any health care institution.

(d) Sport facilities.

(e) Convention or trade show facilities.

(f) Airports, docks, wharves, mass commuting facilities, parking facilities, or storage or training facilities directly related thereto.

(g) Sewage or solid waste disposal facilities or facilities for the furnishing of electric energy, gas or water.

(h) Industrial park facilities.

(i) Air or water pollution control facilities.

(j) Any educational institution.

(8) "project costs" means and includes the sum total of all reasonable or necessary costs incidental to the construction of a

project and the issuance of bonds to finance the project in whole or in part, including without limiting the generality of the foregoing the following, which may be payable by or to the City or any other person:

(i) obligations incurred or assumed by the City or any other person for labor, materials, and equipment in connection with the construction of the project;

(ii) the cost of performance, labor and material bonds and insurance of all kinds that may be required or necessary during the course of construction of the project;

(iii) all costs of architectural and engineering services, including the costs incurred or assumed by the City or any other person for preliminary design and development work, test borings, surveys, estimates and plans and specifications, and for supervising construction, as well as for the performance of all other duties required by or consequent upon the proper construction of the project;

(iv) all costs required to be paid by the City or any other person under the terms of any contract or contracts for the construction or financing of the project;

(v) payment of the initial or acceptance fees of any trustees; the costs of any title search, insurance or opinions; any fees and expenses for recording and filing all documents and instruments in connection with the project and the construction and the financing thereof; and overhead and

administrative expenses properly chargeable to capital or similar accounts in connection with the project;

(vi) payment of the legal, underwriting, financial advisory, rating service and accounting fees and expenses and printing and engraving costs incurred in connection with the authorization, sale and issuance of bonds issued to finance the project in whole or in part and the preparation of all documents in connection with the project and the construction thereof and the issuance of the bonds;

(vii) an initial bond and interest reserve;

(viii). interest to accrue on all bonds issued to finance the project in whole or in part to a date six (6) months subsequent to the estimated date of compietion of the project; and

(ix) the impact aid payment or administrative fee.

(9) "revenues and receipts" of a project or derived from a project includes payments under a lease, sublease, agreement of sale or loan agreement and under notes, debentures, bonds and other secured or unsecured debt obligations of any person executed and delivered to the City or its designee or assignee (including a trustee) pursuant to such lease, sublease, agreement of sale or loan agreement but excluding the impact aid payment or administrative fee.

Sec. 9-41. Legislative Declaration of Purpose. It is hereby determined and declared that the purpose of this Article is to provide a

method for financing the cost of economic development facilities in the City in order to provide employment opportunities and relieve conditions of unemployment and encourage the economic development of the City, thereby reducing the evils attendant upon unemployment and furthering the welfare and prosperity of the residents of the City, and any and all of the same are hereby declared and determined to be public purposes and a proper exercise of a governmental function of the City. It is hereby further determined and declared that each and every matter and thing as to which provision is made in this Ordinance is desirable in order to carry out and effectuate the purposes of the City in accordance with the constitution and statutes of the State of Alaska and the Charter of the City and to issue bonds in accordance with the terms of this Article.

Sec. 9-42. Additional Powers. In addition to other powers which it may have, the City shall have the power under this Article:

(1) To acquire by gift, purchase, lease or sublease, to construct and to finance one or more projects, whether or not now or hereafter in existence, within the City.

(2) To issue its revenue bonds to defray in whole or in part the project costs of any project and to designate an appropriate name for, and all other details of, such bonds.

(3) To rent, lease, sublease, sell or finance any project to any person in such manner that payments to be received with respect to the project shall produce revenues and receipts sufficient to provide for the prompt payment at maturity of principal,

interest and redemption premiums, if any, upon all bonds issued to finance in whole or in part project costs of such project, and without limiting the generality of the foregoing to enter into a lease-leaseback, leveraged leasing, purchase-saleback, loan or other arrangement whereby project costs may be financed.

(4) To pledge the revenues and receipts to be received from a project and its rights to bring actions and proceedings under any lease, sublease, agreement of sale, loan or other instrument for the enforcement of remedies thereunder to the punctual payment of bonds issued to finance in whole or in part project costs of such project, and the interest and redemption premiums, if any, thereon.

(5) To sell and convey any project for such price and at such time (whether prior or subsequent to or concurrently with the payment in full of bonds authorized under this Article) as the Council may determine.

(6) To issue its bonds to refund in whole or in part bonds theretofore issued under this Article, and to extend the term of the refunding bonds beyond the term of the refunded bonds.

Sec. 9-43. Exercise of Powers. The exercise of all powers pursuant to this Article may be authorized by resolution of the Council which may in each instance be adopted at the same meeting, either regular or special or an adjournment of either, at which it is introduced and shall take effect immediately upon adoption.

Sec. 9-44. Bonds. Bonds issued pursuant to this Article may (i) bear interest at such rate or rates payable at such time or times; (ii) be in one or more series; (iii) bear such date or dates; (iv) mature at such time or times not exceeding 40 years from their respective dates; (v) be payable in such medium of payment at such place or places; (vi) carry such registration privileges; (vii) be subject to such terms of redemption at such premiums or otherwise; (viii) be executed in such manner; (ix) contain such terms, covenants and conditions; and (x) be in such form, either coupon or registered, or both, with conversion and reconversion privileges, all as may be prescribed by the resolution of the Council authorizing their issuance; provided that such resolution (a) need not prescribe a definitive interest rate or rates for the bonds but may instead prescribe a maximum interest rate or rates within which the bonds may be sold, (b) need not prescribe the definitive terms upon which the bonds may be redeemed by the City but may instead prescribe minimum and maximum terms of years within which the bonds may be redeemed by the City and the minimum and maximum premiums, if any, payable in the case of such redemptions, (c) need not prescribe the principal amount of the bonds but may instead prescribe a maximum principal amount of bonds to be issued, (d) need not prescribe the definitive principal maturities of or sinking fund payments with respect to the bonds but may instead prescribe minimum and maximum terms of years within which the bonds shall mature or be subject to sinking fund payments and minimum and maximum amounts of such principal securities or sinking fund payments, and (e) need not

designate a trustee and additional paying agents but may instead indicate whether or not a trustee and additional paying agents are to be designated and prescribe qualifications for such trustee and paying agents; provided further that such resolution may appoint the Mayor, City Manager, or such other official as the Council deems advisable, to sell the bonds upon terms and conditions which comply with the provisions of such resolution, and all definitive terms and conditions with respect to the bonds, including the designation of a trustee and additional paying agents, if any, which are not prescribed by the resolution authorizing their issuance shall be established by the terms and conditions upon which the bonds are sold.

Sec. 9-45. Sale of Bonds. Bonds may be sold at public or private sale at such price (which may be at par, at a premium above par or at a discount below par), in such manner and upon such terms and conditions as comply with the provisions of the resolution authorizing the issuance of the bonds, all as may be approved by the official appointed to sell the bonds or by the Council if no such official be appointed.

Sec. 9-46. Interim Receipts or Certificates. Pending the preparation of the definitive bonds, interim receipts and certificates in such form and with such provisions as the Council may determine may be issued to the purchaser or purchasers of bonds sold pursuant to this Article.

Sec. 9-47. Bonds, etc., to be Negotiable Instruments. The bonds and interim receipts or certificates shall be deemed to be securi-

ties and negotiable instruments within the meaning and for all purposes of the "Uniform Commercial Code".

Sec. 9-48. Covenants in Bonds. Any resolution authorizing the issuance of bonds under this Article may provide that the principal of and the interest and premium, if any, on the bonds shall be secured by an indenture of trust covering the revenues and receipts derived from the leasing, subleasing, sale or financing of the project for which the bonds are issued and such other funds and rights, if any, as are assigned and pledged under such indenture of trust. Any such resolution or indenture of trust, or any such lease, sublease, agreement of sale or loan agreement may contain such covenants and provisions as the Council may determine to be advisable, including, but not limited to, covenants and provisions with respect to the project and the bonds, and the security therefor, such as to (a) the application, use and disposition of the proceeds of the bonds and of the revenues and receipts from the project for which the bonds are to be issued, including the creation and maintenance of reserves, if any; (b) the issuance of other or additional bonds relating to the project or any construction of the project; (c) the maintenance and repair of such project; (d) the insurance to be carried thereon and the use and disposition of insurance moneys; (e) the appointment of, or the prescription of qualifications for, any bank or trust company within or outside the State of Alaska, having the necessary trust powers, as trustee for the benefit of the bondholders, paying agent, and bond registrar and the vesting in the trustee of rights, powers, duties, funds and properties for the

benefit of bondholders; (f) the appointment of, or the prescription of qualifications for, any bank or banks or trust company or companies within or outside the State of Alaska, having the necessary trust powers, as additional paying agent or agents for the bonds and the interest thereon; (g) the investment of any funds held under such resolution or indenture of trust; (h) the terms and conditions upon which the holders of the bonds or any portion thereof, or any trustees therefor, are entitled to the appointment of a receiver; and (i) any other matters of like or different character which in any way affect the security or protection of the bonds. Any such resolution and indenture of trust shall be enforceable by any bondholder by appropriate suit, action or proceeding in any court of competent jurisdiction, provided the resolution or indenture of trust under which the bonds are issued may provide that all such remedies and rights to enforcement may be vested in a trustee for the benefit of all the bondholders.

Sec. 9-49. Signatures of Officers on Bonds - Validity of Bonds. The bonds shall bear the manual or facsimile signatures of such officers of the City as may be designated in the resolution authorizing such bonds and such manual or facsimile signatures shall be the valid and binding signatures of the officers of the City, notwithstanding that before the delivery thereof and payment therefor any or all of the persons whose signatures appear thereon have ceased to be officers of the City. The validity of the bonds is neither dependent on nor affected by the validity or regularity of any proceedings relating to the construction of the project for which the bonds are issued. The reso-

lution authorizing the bonds may provide that the bonds shall contain a recital that they are issued pursuant to this Article, which recital shall be conclusive evidence of their validity and of the regularity of their issuance.

Sec. 9-50. Pledge and Lien of Bonds. All bonds issued under this Article shall have a lien upon the revenues and receipts derived from the leasing, subleasing, sale or financing of the project for which the bonds have been issued to the extent such revenues and receipts are pledged pursuant to this Article, and the Council may provide in the resolution authorizing such bonds for the issuance of additional bonds to be equally and ratably secured by a lien upon such revenues and receipts or by a subordinate lien upon such revenues and receipts.

Sec. 9-51. Limited Liability for Bonds. All bonds issued under and pursuant to this Article shall be limited obligations of the City payable solely out of the revenues and receipts derived from the leasing, subleasing, sale or financing of the project with respect to which such Bonds are issued. Bonds issued under this Article are not payable from taxes levied upon the taxable real and personal property in the City and are not a charge against the general credit or taxing power of the City. No holder of any bonds issued under this Article shall have the right to compel any exercise of the taxing power of the City to pay the bonds or the interest or premiums, if any, thereon, and the bonds do not constitute an indebtedness of the City or a loan of credit thereof within the meaning of any constitutional or statutory

provision. It shall be plainly stated on the face of each bond that it has been issued under the provisions of this Article and that it is not payable from taxes levied upon the taxable real and personal property in the City and is not a charge against the general credit or taxing power of the City and does not constitute an indebtedness of the City or a loan of credit thereof within the meaning of any constitutional or statutory provision.

Sec. 9-52. Exemption from Construction and Other Requirements for Public Buildings. The construction of a project shall not be subject to any requirements relating to public buildings, structures, grounds, works or improvements imposed by any ordinance or resolution of the City, or to any other similar requirements, and any requirement of competitive bidding or other restriction imposed on the procedure for award of contracts for such purpose or the lease, sublease, sale or other disposition of property of the City is not applicable to any action taken pursuant to this Article.

Sec. 9-53. Procedures Established as Additional and Supplemental - Limitations Imposed - Effect. The procedures established by this Article are in addition and supplemental to, and the limitations imposed by this Article shall not affect, the exercise of powers conferred by the Charter, any law or any other ordinance. Construction of any projects may be accomplished and financed, and bonds may be issued under this Article for such purposes, notwithstanding that any law or any other ordinance may provide for the construction and financing of a like project, or the issuance of bonds for like purposes, and

without regard to the requirements, restrictions, limitations or other provisions contained in any law or any other ordinance.

Sec. 9-54. Impact Aid Payment or Administrative Fee. The City shall require an impact aid payment or administrative fee each time that bonds are issued under the provisions of this Article in order to enable the City to defray, in whole or in part, costs associated with the development, administration and expansion occasioned by the project. The impact aid payment or administrative fee shall be one percent (1%) of the principal amount of the bonds then being issued. The impact aid payment or administrative fee shall not constitute a part of the revenues and receipts of a project or derived from a project.

Sec. 9-55. Contract with Bondholders. The provisions of (i) this Article; (ii) the resolution of the Council authorizing the issuance of the bonds; (iii) the contract of sale of the bonds; (iv) any indenture of trust executed in connection therewith; and (v) the bonds shall collectively constitute a contract with the holder or holders of the bonds, and no subsequent change in this Article or in any law may in any way limit the rights of the holder or holders of the bonds or alter the obligations of the City under the terms of such contract until the entire principal of and interest and redemption premiums, if any, on such bonds have been fully paid or provision for the payment thereof made in accordance with the terms of such contract.

Sec. 9-56. Severability Clause. The provisions of this Article, except Section 9-51 hereof, are severable and if any such provisions or any sentence, clause or paragraph thereof shall be held

unconstitutional or ineffective by any court of competent jurisdiction, the decision of such court shall not affect or impair any of such remaining provisions.

Section 2. Sections 9-1 through 9-39, inclusive, of Chapter 9 of the Valdez City Code shall be designated: Article I. In General.

Section 3. Effective Date. The provisions of this Ordinance shall take effect immediately.

PASSED AND APPROVED by the Council of the City of Valdez, Alaska, on the 19th day of November, 1979.

Bill Walker
Mayor

ATTEST:

City Clerk /City Manager

First Reading: November 12, 1979
Second Reading: November 19, 1979
Adoption: November 19, 1979
Ayes: 6
Noes: 0
Absent: 1

APPROVED AS TO FORM:

HUGHES, THORSNESS, GANTZ, POWELL AND BRUNDIN
Attorneys for the City of Valdez

By Kenneth P. Jacobus
Kenneth P. Jacobus

CITY OF VALDEZ

ALASKA

RESOLUTION NO. 7953

A RESOLUTION RELATING TO THE FINANCING OF CERTAIN ECONOMIC DEVELOPMENT FACILITIES AND OTHER FACILITIES FOR GENERAL PUBLIC USE.

WHEREAS, the City of Valdez, Alaska (the "City") is authorized to issue economic development bonds pursuant to Article II of Chapter 9 of the City Code; and

WHEREAS, The Alpetco Company (the "Company"), a joint venture partnership organized or to be organized among Alaska Petrochemical Company, Charter Oil (Alaska) Inc. and The E. F. Hutton Group, Inc., desires to borrow funds made available through the issuance of such bonds in order to acquire, construct and develop certain economic development facilities and other facilities for general public use (the "Project") more fully described in Exhibit A attached hereto; and

WHEREAS, Federal Income Tax Regulations require that the City adopt a bond resolution with respect to such bonds or take some other similar official action toward the issuance of such bonds prior to the commencement of construction or acquisition of the Project; and

WHEREAS, the City considers the acquisition, construction and development of the Project to be in furtherance of its needs and public purposes and that the financing of the Project will have the effect of increasing employment, increasing the tax base in the City and promoting the general health and welfare of the inhabitants of the City

and that it is in the best interests of the City to issue such bonds in order to loan the proceeds to the Company; and

WHEREAS, the construction of the dock facility is consistent with and promotes the development of the Port of Valdez within the jurisdiction of the City as a major public port in Southcentral Alaska and as a gateway to Fairbanks and Interior Alaska; and

WHEREAS, the Project (except for the dock facility) will be located in an industrial park to be developed by the City for building sites for enterprises engaged in industrial, distribution or wholesale business and it is the intention of the City to proceed with the planning, development and construction of said industrial park;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF VALDEZ, ALASKA, AS FOLLOWS:

1. The City will issue and sell its economic development bonds in one or more issues (the "Bonds") in a principal amount sufficient to provide funds to the Company in order to pay the cost as defined in Section 9-40 of the City Code of financing the Project, together with costs incident to the authorization, sale and issuance of the Bonds, the total of all such Project and incidental costs to be financed through the issuance of the Bonds being presently estimated to be $600,000,000.

2. The City will also issue and sell additional bonds in a principal amount sufficient to provide funds to the Company in order to pay any cost overruns or additional costs of the Project in excess of

the presently estimated costs, or the costs of any modifications or additions to the Project.

3. The proceeds of the Bonds will be loaned or otherwise provided to the Company in order to acquire, construct and develop the Project or any modifications or additions thereto.

4. The Mayor is hereby authorized and directed to execute and deliver a commitment letter to the Company substantially in the form provided in Exhibit B attached hereto.

5. The City will enter into a loan agreement or other financing agreement with the Company or other owners, lessees, users or beneficiaries of the Project to provide revenues to the City sufficient for the payment of the Bonds.

6. The City will adopt such proceedings and authorize the execution and delivery of such documents as may be necessary or advisable for the authorization, issuance and sale of the Bonds, the acquisition, construction and development of the Project, and the execution of a loan agreement or other financing agreement with respect to the Project with the Company or other owners, lessees, users or beneficiaries of the Project. The terms of the Bonds, including the rates of interest thereon shall be determined by the Council as set forth in Section 9-44 of the City Code.

7. The City will take or cause to be taken such other acts and adopt such further proceedings as may be required to implement the aforesaid undertakings or as it may deem appropriate in pursuance thereof.

8. The Bonds shall specify on their face that they shall be payable solely out of the revenues derived from the loan agreement or other financing agreement with respect to the Project and that they shall not constitute a debt or indebtedness of the City within the meaning of any provision or limitation of the Constitution or statutes of the State of Alaska.

9. The City shall develop a plan for an industrial park which shall be created upon submission and approval of the plan by the Council. Such industrial park shall be open for use as building sites by enterprises engaged in industrial, distribution or wholesale business including the Project.

10. It is intended that this Resolution shall constitute "some other similar official action" toward the issuance of the Bonds within the meaning of Section 1.103-8(a)(5) of the Federal Income Tax Regulations.

PASSED AND ADOPTED by the City Council of the City of Valdez, Alaska, this 19th day of November, 1979.

Bill Walker
Mayor

ATTEST:

City Clerk/City Manager

EXHIBIT A

TO RESOLUTION NO. 7953, ADOPTED NOVEMBER 19, 1979 BY THE COUNCIL OF THE CITY OF VALDEZ, ALASKA

## DESCRIPTION OF PROJECT

The facilities comprising the Project to be acquired, constructed and developed within the city limits of Valdez, Alaska, include:

> A dock facility for the loading and unloading of petroleum products and the associated piping and incidental facilities, storage facilities associated with the dock, general site development incidental to the preparation of the site as an industrial park (said industrial park to be used for building sites for industrial, distribution and wholesale businesses including the Project), air and water pollution control facilities, sewage and solid waste disposal facilities, facilities for the generation of electric energy for general use within the industrial park and by the general public; all to be used in connection with a petroleum refinery facility to be acquired, constructed and developed in conformity with the specifications of the Alaska Royalty Crude Oil Contract dated February 22, 1978 between Alaska Petrochemical Company and the State of Alaska, as heretofore and hereafter amended, and such other portions of the refinery facility as may be financed with economic development bonds, the interest on which is exempt from federal income taxation.

City of Valdez
Inc. 1901


OFFICE OF ADMINISTRATION
November , 1979

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

Gentlemen:

On behalf of the City of Valdez, Alaska (the "City"), I am pleased to confirm the City's commitment to loan or otherwise provide up to $600,000,000 or such additional amount as shall be deemed necessary to The Alpetco Company (the "Company") from the proceeds of the sale of the City's economic development bonds (the "Bond") in accordance with the provisions of Ordinance No. 7917 of the City (the "Ordinance") adopted on November 19, 1979, on the terms and subject to the conditions set forth below.

This commitment is subject to (i) entering into a loan agreement or other financing agreement with the Company in accordance with Resolution No. 7953 of the City adopted on November 19, 1979, and (ii) receipt of an opinion of bond counsel to the effect that the Bonds will be in conformity with the Ordinance and that interest thereon will be exempt under the existing statutes, regulations, court decisions and rulings from Federal income taxes.

All funds provided shall be expended in the acquisition, construction and development of the project facilities described in Exhibit A of the Resolution and for no other purpose. All funds provided shall be expended at such times and for such purposes as shall comply with the provisions of the Ordinance and shall preserve the tax-exempt nature of interest payable on the Bonds.

All expenses incurred by the City in connection with the preparation of the loan agreement or other financing agreement and the issuance of the Bonds, including fees of the City's counsel, bond counsel, financial advisory fees, administrative fees, printing and other expenses, will be paid out of the proceeds from the sale of the Bonds or by the Company.

AGO 560001

This commitment shall remain in effect for a period of 60 months from the date hereof. The Company shall not be obligated to pay a commitment fee in connection with this transaction, nor shall it be obligated to take down the full amount of the amount committed or any part thereof.

Sincerely,

CITY OF VALDEZ, ALASKA

By Bill Walker
Mayor

E F Hutton & Company Inc
New York Stock Exchange

E F 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 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

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
Executive Vice President

## 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 commiting 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 |
| | $350,000,000.00 |

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 commiting to contribute such equity funds to The Alpetco Company.

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

Nworths

AKI 111 m

ST 25 m

Charter 509 m

EFH 163 m

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.

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 _____

ALASKA PETROCHEMICAL COMPANY
3700 BUFFALO SPEEDWAY
HOUSTON, TEXAS 77098
TELEPHONE 713 840-1243 TELEX 79145

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 Cain

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 O. Charles Honig

Howard M. Pack
Vice Chairman of the Board

Seatrain Lines, Inc.

1 Chase Manhattan Plaza
New York, New York 10005

Phone: (212) 964-3400
Telex:
International: 232740 (RCA)
421225 (ITT)
Domestic: 710-581-2934 (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,

SEATRAIN LINES, INC.

By _____

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

EF Hutton

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 _____

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 _____

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.

work 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

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 & HUIE
THE OMAHA BUILDING
1650 FARNAM STREET
OMAHA, NEBRASKA 68102
(402) 346-6000

ROBERT J. KUTAK
HAROLD L. ROCK
WILLIAM G. CAMPBELL
ALLAN JAY GARFINKLE
THOMAS A. WOODWARD
GLEN A. BURBRIDGE
RI[illegible]D L. WEILL
J[illegible]. HUSSELMAN
WA[illegible]CE H. JOHNSON
RICHARD A. SPELLMAN
STEVEN S. HUFF
GREGORY DuBOIS ERWIN
THOMAS J. McCUSKER
GEORGE H. KRAUSS
MAUREEN E. McGRATH
HUGH W. McNULTY, JR.
KENNETH J. STUART
DIRK W. deROOS
ANGELO P. PARKER
J. MICHAEL GOTTSCHALK
KEN[illegible]TH E. ILTZ
JAMES D. ARUNDEL
JOHN J. WAGNER
DONALD [illegible]. KRESS
DANIEL S. HOROWITZ
PAUL R. TI[illegible]FT
RONALD T. PFEIFER
GREGORY W. SEARSON
JOHN E. HUBBARD
HARRY D. DIXON, JR.
JOE E. ARMSTRONG
WILLIAM E. HOLLAND
RICHARD D. CIMINO
GARETH G. MORRIS
HAVEN N. B. PELL
PAUL D. BUDD
JOEL T. BOEHM
TERRENCE J. FERGUSON
C. GREGORY H. EDEN
LARRY L. CARLILE
SARAH J. PENN
LAUREN M. RONALD
PATRICIA J. WINTER
LINDSEY MILLER LERMAN
JOYCE A. DIXON
DIANNE L. STODDARD
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 POGGE
J. THOMAS MARTEN
D. CHARLES SHOEMAKER
KENNETH R. DODDS
WALTER L. GRIFFITHS
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JO E. BASS
FRANK A. TAYLOR
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SHEILA A. PHILLIPS
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COUNSEL

ATLANTA
1200 STANDARD FEDERAL SAVINGS BUILDING
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MINNEAPOLIS, MINNESOTA 55402
(612) 338-1460

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

December 11, 1979

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.

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

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

AGO 560025

Exhibit 1

THE ALPETCO COMPANY

December 13, 1979

Pro Forma Funds Flow Statement
($Millions)

| Sources | 1977 to 3rd Qtr.,1979 | 1979 4th Qtr. | 1980 1st | 1980 2nd | 1980 3rd | 1980 4th | 1981 1st | 1981 2nd | 1981 3rd | 1981 4th | 1982 1st | 1982 2nd | 1982 3rd | 1982 4th | Total |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 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.F. 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 | 163.6 | 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.

AGO 560026

Exhibit 2

December 12, 1979

THE ALPETCO COMPANY

Pro Forma Funds Flow Statement
($Millions)

| Sources | 1977 to 3rd Qtr,1979 | 1979 4th Qtr. | 1980 1st | 1980 2nd | 1980 3rd | 1980 4th | 1981 1st | 1981 2nd | 1981 3rd | 1981 4th | 1982 1st | 1982 2nd | 1982 3rd | 1982 4th | Total |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 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- | 81.5 |
| 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 | 1.9 | 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 | 180.0 | 181.5 | 181.4 | 170.5 | 1657.3 |
| Cumulative Totals | 7.0 | 12.0 | 18.0 | 100.0 | 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 coodinator 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.

AGO 560032

Ron Dagon ✓ M. B. Carmichael

RECEIVED
OCT 15 1979
ALPETCO

# STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

## DEPARTMENT OF NATURAL RESOURCES

OCT 22 1979

OFFICE OF THE COMMISSIONER / POUCH M – JUNEAU 99811

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).

10-J9LH

AGO 560033

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.

ATTACHMENT #1 LeResche to Cain (modified)

| 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) |

AGO 560037

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 713 840-1243 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.

601 WEST 5TH AVENUE, ANCHORAGE, ALASKA, 99501, TELEPHONE 907 272-1517, TELEX 090-25157

AGO 560040

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 offsite 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 |

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

Gordon A. Cain
President

GAC:br

w/attachment

Attachment

December 3, 1979

# 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.

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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.

601 WEST 5TH AVENUE, ANCHORAGE, ALASKA, 99501, TELEPHONE 907 272-1517, TELEX 090-251157

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

Gordon A. Cain
President

GAC:t
Enclosures.

Rec'd 12-17-7.
10 25 am

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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 CONSTRUCTION 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 FOLLOWING:

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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

85685612 TRT D

western union

AGO 560056

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 | Unser Hausruf (Direktwahl) | Düsseldorf |
|---|---|---|---|---|
| | | Recht/Dr.W./ho | (0211) 3803- | 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.



AGO 560057

Geschäftsführung: Dr. Helmut Gschwend (Vorsitzender)

Handelsregister-Nr. HR B 3311

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

[illegible] Company, U.S.A.
[illegible]
[illegible] Texas 77001

Attention: [illegible], 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.

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 critized the court's earlier opinions. In Jefferson v. State, the court held that Article X, §11, which states that:

> "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 statewide 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 critized 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

> "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.

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

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:

> "Only the following provisions of this title apply to home rule municipalities as prohibitions on acting otherwise than as provided."

At footnote 33, 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 Kodercik v. Sullivan, 526 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 lessor 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.

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 8 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

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."

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 perameters 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 striken. 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:jr

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 ⇐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 ⇐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 ⇐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, § 9.

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

4. Municipal Corporations ⇐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, § 6.

5. Municipal Corporations ⇐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, § 6.

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Eric 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.

AGO 560072

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 698 (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 995, 998 (Alaska 1969), 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 Aetna Life Insurance Company of Hartford, Conn. v. Haworth, 300 U.S. 227, 57 S.Ct. 461, 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 Andalusia, 257 Ala. 49, 57 So.2d 629 (1952); Wayland v. Snapp, [232 Ark. 57], 334 S.W.2d 623 (Ark.1960); Dycke [sic] v. City of London, 288 S.W.2d 648 (1956); Miller v. Police Jury, 226 La. 8, 74 So.2d 391 (1954); City of Frostberg [Frostburg] v. Jenkins, 215 Md. 9, 136 A.2d 872 (1957); Village of Deming v. Hosdreg Co., 62 N.M. 18, 303 P.2d 920 (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, 70 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."

AGO 560074

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 constitution[6] 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, 257 Ala. 49, 57 So.2d 629 (1952); Wayland v. Snapp, 232 Ark. 77, 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 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."



AGO 560075

*Hixson* case[7] as being "associated with value represented by real or personal property in some form and with relative permanency." 373 P.2d, at 747. 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 FULFILLMENT 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,

> "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

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 acres of downtown property from the city's tax rolls." 373 P.2d, at 748.

8. See Note, "Legal Limitations on Public Inducements to Industrial Location," 59 Colum.L.Rev. 618 (1959).

9. Newberry v. City of Andalusia, 257 Ala. 89, 57 So.2d 629 (1952); Wayland v. Snapp, 232 Ark. 57, 334 S.W.2d 622 (1960); Dyche v. City of London, 288 S.W.2d 678 (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 (1962).

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.

AGO 560076

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. 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.

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

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RAVEN V. P. BELL
PAUL D. LUCO
JOEL T. BOEHM
TERRENCE J. FERGUSON
J. GREGORY M. EDEN
LARRY L. CARLILE
SARAH J. PENN

LAUREN M. RONALD
PATRICIA J. WINTER
LINDSEY MILLER LERMAN
JOYCE A. DIXON
DIANNE L. STODDARD
TIMOTHY J. KINCAID
JOHN C. MINAHAN, JR.
FRED M. GREGURAS
PAUL E. BELITZ
DENIS P. BURKE
SCOTT C. HOYT
DANIEL S. REYNOLDS
DAVID J. JACOBSON
P. THOMAS POGGE
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 I. CURRY
LOREN E. DOSSONVILLE
DAWN R. OLIVEN
JANE ERDENBERGER
FELICIA C. FLOWERS
LYNNE A. FRIEDEWALD
DENNIS L. HOLSAPPLE
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 A. SCHUETT
STEVEN W. SELINE
JUDY A. WEILL
DENNIS B. WILSON

THE OMAHA BUILDING
1650 FARNAM STREET
OMAHA, NEBRASKA 68102
(402) 346 6000

OMAN L. KRUSKA
WILLIAM GROSINSKY
FRANK L. SUBBRIDGE
GAIL E. SUBBRIDGE
COUNSEL

ATLANTA
1800 STANDARD FEDERAL SAVINGS BUILDING
ATLANTA GEORGIA 30303
404 522-6700

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

MINNESOTA
4644 IDS TOWER
MINNEAPOLIS, MINNESOTA 55402
612 338-1690

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

December 14, 1979

Dr. Robert LeResche
Commissioner of Natural Resources
Pouch "M"
Juneau, Alaska 99801

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;

(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

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

AGO 560081

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.

601 WEST 5TH AVENUE ANCHORAGE, ALASKA 99501, TELEPHONE 907 272-1517, TELEX 090-25157

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

The Company obtained financing commitments for the project in the aggregate of $1.7 billion.

On November 19, 1979 the City of Valdez, Alaska unanimously passed Ordinance 7917 authorizing the City to issue tax exempt industrial revenue bonds to finance the Alpetco project. Also, on November 19, 1979, the City Council of Valdez unanimously passed Resolution 7953 authorizing the Mayor of Valdez to execute a commitment to lend Alpetco $600,000,000 from the proceeds of the sale of tax exempt industrial revenue bonds. To support this commitment, the City of Valdez has obtained and underwriting commitment, dated November 19, 1979 from E. F. Hutton & Company to purchase $600,000,000 of the tax exempt bonds.

On December 7, 1979 in consideration of Alpetco entering into the aforementioned engineering and construction contract with Thyssen Rheinstahl Technik GmbH and Foster Wheeler Energy Corporation, Thyssen Rheinstahl Technik delivered a letter committing Thyssen to arrange financing of up to $750,000,000 to cover the cost for the engineering, equipment, materials, construction and other services required for the project.

By letters dated December 13, 1979 the partners of The Alpetco Company have committed, subject to certain conditions, to contribute in the aggregate $350,000,000 in equity to the Alpetco project.

Sincerely,

Gordon A. Cain

Gordon A. Cain
President

GAC/my

cc: Mr. Thomas K. Williams, Commissioner of Revenue (Juneau)
Mr. Thomas Cook, Director Division of Minerals and Energy Management (Anchorage)
Mr. Ed Park, Division of Minerals and Energy Management (Anchorage)

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

December 13, 1979

Dr. Robert E. LeResche
Commissioner of Natural Resources
State of Alaska
Pouch "M"
Juneau, Alaska 99801

Dear Commissioner LeResche:

The Alpetco Company, a joint venture partnership ("Alpetco") established as of October 1, 1979, by Charter Oil (Alaska), Inc., 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 has, in our opinion, satisfied the benchmark provisions of Section 10.2(3) of the Royalty Oil Contract.

Assuming that you concur, we respectfully request that you confirm to us in writing that the provisions of Section 10.2(3) of the Royalty Oil Contract have been satisfied, and that you will give notice to the Lessees (as defined in the Royalty Oil Contract) as soon as practicable but not later than January 18, 1980, pursuant to Section 2.2 of the Royalty Oil Contract, exercising the State of Alaska's right to take its royalty oil in kind, up to 150,000 barrels per day, for sale to The Alpetco Company pursuant to the terms of the Royalty Oil Contract.

In connection with our request to initiate deliveries to us of royalty crude oil beginning July 18, 1980, we are providing with this letter commitments of the Partners that $100 million in Total Project Costs (as defined in the Royalty Oil Contract) will actually be expended within six (6) months following the date on which you give notice to the Lessees of the State's election to take royalty oil in kind for sale to us. In addition, at your request, we are also providing you a letter dated December 12, 1979 setting forth how Alpetco expects that the $100 million will be spent.

Sincerely,

THE ALPETCO COMPANY

By Gordon A Cain
Gordon A. Cain, President

601 WEST 5TH AVENUE, ANCHORAGE, ALASKA 99501, TELEPHONE 907 272-1517, TELEX 090-25157

AGO 560085

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 Charter Oil (Alaska), Inc., 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.

Alpetco has today by letter addressed to the Commissioner of Natural Resources of the State of Alaska (the "Commissioner") notified the Commissioner of Alpetco's compliance with the benchmark provisions of Section 10.2(3) of the Royalty Oil Contract and of its request for the Commissioner to take the appropriate steps to initiate deliveries to Alpetco of crude oil in July, 1980, pursuant to the terms of the Royalty Oil Contract. Under the Royalty Oil Contract, in order for Alpetco to be entitled to delivery of crude oil, $100 million in Total Project Costs (as defined in the Royalty Oil Contract) must first actually have been expended.

The Partners have determined that in order to provide assurances to the Commissioner that at least $100 million in the expenditures for Total Project Costs will be made prior to crude oil deliveries, it would be desirable for the Partners to commit to the Commissioner pro rata in accordance with their partnership interest that such expenditures will be made.

Accordingly, the undersigned commits that by the date (the "Expenditure Date") which is six (6) months following the date on which the Commissioner gives notice to the Lessees (as defined in the Royalty Oil Contract) of the election of the State of Alaska to take royalty oil in kind

for sale to Alpetco, the undersigned will actually expend in Total Project Costs 70.0% of the excess, if any, of $100 million over the amount actually expended in Total Project Costs prior to the Expenditure Date, not to exceed $70,000,000, provided each of the other Partners performs its similar commitment pro rata in accordance with its partnership interest. The commitment of the undersigned hereunder is subject only to the Royalty Oil Contract remaining in effect with Alpetco entitled to the rights of "Buyer" thereunder and to the absence of any statute, rule or order of any governmental or judicial authority which prohibits or prevents, or any governmental or judicial action or proceeding which seeks to prohibit or prevent Alpetco from exercising the rights of "Buyer" under the Royalty Oil Contract.

The above commitment of the undersigned is made, with similar commitments of the other Partners, 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.

Attached hereto is a commitment 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 Speeedway
Houston, Texas 77098

Dear Sirs:

The undersigned, The Charter Company, is the 100% shareholder of Charter Oil (Alaska), Inc. 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. Charter Oil (Alaska), Inc. 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 $70.0 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 $30.0 million in expenditures.

To provide further assurances to the Commissioner, the undersigned commits that if, and to the extent, Charter Oil (Alaska), Inc. should fail, in whole or in part, to fulfill Charter Oil (Alaska), Inc.'s commitment relating to expenditures in accordance with its terms, the undersigned shall fulfill such commitment.

The above commitment of the undersigned is made, with similar commitments by the shareholders of the partners in Alpetco other than Charter Oil (Alaska), Inc., 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.

Yours very truly,

THE CHARTER COMPANY

By

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 Charter Oil (Alaska), Inc., 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.

Alpetco has today by letter addressed to the Commissioner of Natural Resources of the State of Alaska (the "Commissioner") notified the Commissioner of Alpetco's compliance with the benchmark provisions of Section 10.2(3) of the Royalty Oil Contract and of its request for the Commissioner to take the appropriate steps to initiate deliveries to Alpetco of crude oil in July, 1980, pursuant to the terms of the Royalty Oil Contract. Under the Royalty Oil Contract, in order for Alpetco to be entitled to delivery of crude oil, $100 million in Total Project Costs (as defined in the Royalty Oil Contract) must first actually have been expended.

The Partners have determined that in order to provide assurances to the Commissioner that at least $100 million in the expenditures for Total Project Costs will be made prior to crude oil deliveries, it would be desirable for the Partners to commit to the Commissioner pro rata in accordance with their partnership interest that such expenditures will be made.

Accordingly, the undersigned commits that by the date (the "Expenditure Date") which is six (6) months following the date on which the Commissioner gives notice to the Lessees (as defined in the Royalty Oil Contract) of the election of the State of Alaska to take royalty oil in kind for sale to Alpetco, the undersigned will actually expend in



AGO 560089

Total Project Costs 23.4% of the excess, if any, of $100 million over the amount actually expended in Total Project Costs prior to the Expenditure Date, not to exceed $23,400,000, provided each of the other Partners performs its similar commitment pro rata in accordance with its partnership interest. The commitment of the undersigned hereunder is subject only to the Royalty Oil Contract remaining in effect with Alpetco entitled to the rights of "Buyer" thereunder and to the absence of any statute, rule or order of any governmental or judicial authority which prohibits or prevents, or any governmental or judicial action or proceeding which seeks to prohibit or prevent Alpetco from exercising the rights of "Buyer" under the Royalty Oil Contract.

The above commitment of the undersigned is made, with similar commitments of the other Partners, 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.

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 Cain

ALASKA INTERSTATE COMPANY
P. O. Box 6554
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 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 shall fulfill its pro rata share of such commitment.

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.

Yours very truly,

ALASKA INTERSTATE COMPANY

By O. Charles Hanig

E.F. HUTTON (ALASKA) INC.
One Battery Park Plaza
New York, New York 10004
212/742-5000

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 Charter Oil (Alaska), Inc., 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.

Alpetco has today by letter addressed to the Commissioner of Natural Resources of the State of Alaska (the "Commissioner") notified the Commissioner of Alpetco's compliance with the benchmark provisions of Section 10.2(3) of the Royalty Oil Contract and of its request for the Commissioner to take the appropriate steps to initiate deliveries to Alpetco of crude oil in July, 1980, pursuant to the terms of the Royalty Oil Contract. Under the Royalty Oil Contract, in order for Alpetco to be entitled to delivery of crude oil, $100 million in Total Project Costs (as defined in the Royalty Oil Contract) must first actually have been expended.

The Partners have determined that in order to provide assurances to the Commissioner that at least $100 million in the expenditures for Total Project Costs will be made prior to crude oil deliveries, it would be desirable for the Partners to commit to the Commissioner pro rata in accordance with their partnership interest that such expenditures will be made.

Accordingly, the undersigned commits that by the date (the "Expenditure Date") which is six (6) months following the date on which the Commissioner gives notice to the Lessees (as defined in the Royalty Oil Contract) of the election of the State of Alaska to take royalty oil in kind for sale to Alpetco, the undersigned will actually expend in Total Project Costs 6.6% of the excess, if any, of $100 million over the

amount actually expended in Total Project Costs prior to the Expenditure Date, not to exceed $6,600,000, provided each of the other Partners performs its similar commitment pro rata in accordance with its partnership interest. The commitment of the undersigned hereunder is subject only to the Royalty Oil Contract remaining in effect with Alpetco entitled to the rights of "Buyer" thereunder and to the absence of any statute, rule or order of any governmental or judicial authority which prohibits or prevents, or any governmental or judicial action or proceeding which seeks to prohibit or prevent Alpetco from exercising the rights of "Buyer" under the Royalty Oil Contract.

The above commitment of the undersigned is made, with similar commitments of the other Partners, 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.

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

Very truly yours,

E.F. HUTTON (ALAKSA) INC.

By _____

EF Hutton

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 a 100% shareholder of E. F. Hutton (Alaska) Inc. 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. E. F. Hutton (Alaska) Inc. 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 $6.6 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 $93.4 million in expenditures.

To provide further assurances to the Commissioner, the undersigned commits that if, and to the extent, E. F. Hutton (Alaska) Inc. should fail, in whole or in part, to fulfill E. F. Hutton (Alaska) Inc.'s commitment relating to expenditures in accordance with its terms, the undersigned shall fulfill such commitment.

The above commitment of the undersigned is made, with similar commitments by the shareholders of the partners in Alpetco other than E. F. Hutton (Alaska) Inc., solely for the purpose of providing the Commissioner assurances that a 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.

Yours very truly,

THE E. F. HUTTON GROUP INC.

By _____

Howard M. Pack
Vice Chairman of the Board

# Seatrain Lines, Inc.

1 Chase Manhattan Plaza
New York, New York 10005

Phone: (212) 964-3400
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 owner of 100% of Barbour Oil Company, which is a 22.12% 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 as 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 shall fulfill its pro rata share of such commitment.

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.

Yours very truly,
SEATRAIN LINES, INC.

By _____

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

December 12, 1979

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

Dear Commissioner LeResche:

According to the provisions of our Royalty Oil Contract as amended, Alpetco may purchase royalty crude oil only after 25 months have passed from the Effective Date and $100,000,000 has been expended in Total Project Costs.

The purpose of this letter is to assure you that the $100,000,000 will be spent timely so that notice will be given to the North Slope Producers in time for Alpetco to purchase the royalty crude oil immediately after 25 months have passed from the Effective Date.

The $100,000,000 will be spent in the following manner:

1. The Total Project Costs for administration, engineering, legal and environmental permitting by July 1, 1980, will exceed $25,000,000.

2. As soon as the weather allows and the necessary permits have been issued, we will start site preparation in Valdez. This will involve clearing and leveling the site, building roads and bridges, putting in dykes and drainage ditches, and building or rehabilitating the wharf to unload equipment. The total amount we expect to spend in 1980 for these purposes is $30,000,000. If we are able to start work by May 1, 1980, we expect to spend $2,600,000 of this by July 1, 1980.

3. We will spend an additional amount for one or more of the purposes listed below such that the sum of the amount spent hereunder plus the amounts spent under No. 1 and No. 2 above will exceed $100,000,000:

    a. Order and pay for long delivery items such as compressors, turbines, and electrical equipment.

601 WEST 5TH AVENUE ANCHORAGE, ALASKA 99501, TELEPHONE 907 272-1517, TELEX 090-25157
AGO 560097

b. Order and pay for steel to be used in fabricating process equipment, tanks, and structures for the facility.

c. Buy a construction camp.

Attached are letters from the owners of Alpetco committing the $100,000,000 required to carry out the above program.

Very truly yours,

ALASKA PETROCHEMICAL COMPANY

By Gordon A Cain
Gordon A. Cain, President

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

December 13, 1979

Dr. Robert E. LeResche
Commissioner of Natural Resources
Pouch "M"
Juneau, Alaska 99801

Dear Commissioner LeResche:

When negotiating the terms of its Royalty Oil Contract with the State of Alaska some two years ago, Alaska Petrochemical Company insisted on a right to begin purchasing the royalty oil prior to the time of plant start-up. As you know, we held out for this right so that we could have this crude processed into products we would eventually make in Alaska and thus begin developing market channels for them. We also maintained that we needed the opportunity to benefit from interim crude transactions in order to help the economics of building a large plant in Alaska.

While the Royalty Oil Contract does not require us to do so, we have maintained all along that profits realized from the sale or processing of the crude prior to plant start-up could be critical to the success of the project.

It is therefore with great pleasure that I attach hereto letters from the individual partners of Alpetco representing a commitment to reinvest such profits as required for equity in Alpetco.

Sincerely,

Gordon A. Cain

Gordon A. Cain
President

GAC/my

601 WEST 5TH AVENUE, ANCHORAGE, ALASKA 99501, TELEPHONE 907 272-1517, TELEX 090-25157

AGO 560099

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

December 13, 1979

The Alpetco Company
c/o Alaska Petrochemical 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.

While not required by the terms of the Royalty Oil Contract, Alaska Petrochemical Company hereby agrees to leave in Alpetco or contribute to Alpetco an amount equal to Alaska Petrochemical Company's net profits resulting from the sale and/or processing of interim crude oil by Alpetco, as required for Alaska Petrochemical Company's equity in Alpetco.

Sincerely,

ALASKA PETROCHEMICAL COMPANY

By Gordon A Cain

601 WEST 5TH AVENUE, ANCHORAGE, ALASKA 99501, TELEPHONE 907 272-1517, TELEX 090-25157

CHARTER OIL (ALASKA), INC.
P. O. Box 4726
Jacksonville, Florida 32201
904/358-4395

December 13, 1979

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

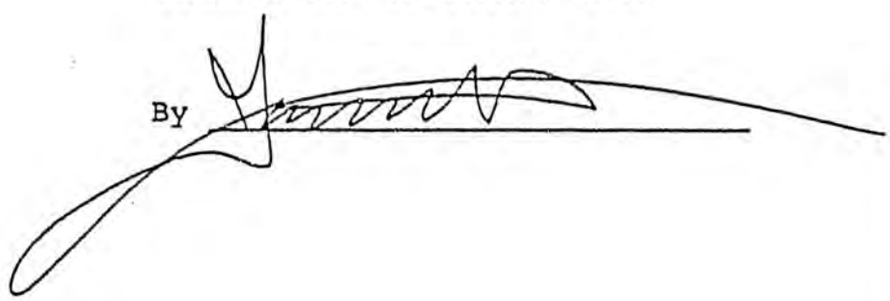
Dear Sirs:

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.

While not required by the terms of the Royalty Oil Contract, Charter Oil (Alaska), Inc. hereby agrees to leave in Alpetco or contribute to Alpetco an amount equal to Charter Oil (Alaska), Inc.'s net profits resulting from the sale and/or processing of interim crude oil by Alpetco, as required for Charter Oil (Alaska), Inc.'s equity in Alpetco.

Sincerely,

CHARTER OIL (ALASKA), INC.

By 

E. F. HUTTON (ALASKA) INC.
One Battery Park Plaza
New York, New York 10004
212/742-5000

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.

While not required by the terms of the Royalty Oil Contract, E. F. Hutton (Alaska) Inc. hereby agrees to leave in Alpetco or contribute to Alpetco an amount equal to E. F. Hutton (Alaska) Inc.'s net profits resulting from the sale and/or processing of interim crude oil by Alpetco, as required for E. F. Hutton (Alaska) Inc.'s equity in Alpetco.

Sincerely,

E. F. HUTTON (ALASKA) INC.

By _____

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

ALASKA PETROCHEMICAL COMPANY

Alaska Royalty Crude Oil Contract
February 22, 1978

INDEX

# AGREEMENT FOR THE SALE AND PURCHASE

# OF

# STATE ROYALTY OIL

ALASKA PETROCHEMICAL COMPANY
an Alaska corporation

THE STATE OF ALASKA
Department of Natural Resources

February 22, 1978

AGO 560105

TABLE OF CONTENTS

PAGE

ARTICLE



EXHIBITS

AGREEMENT FOR THE SALE AND

PURCHASE OF STATE ROYALTY OIL

THIS AGREEMENT entered into as of the 22nd day of February, 1978, by and between THE STATE OF ALASKA, hereinafter called the "Seller," acting by and through its Commissioner of Natural Resources pursuant to Alaska Statute 38.05.183 and ALASKA PETROCHEMICAL COMPANY, an Alaskan corporation, hereinafter called the "Buyer."

W I T N E S S E T H :

WHEREAS, it is in the mutual best interests of Seller and Buyer that Buyer construct and operate a petrochemical facility in Alaska to process the oil sold hereunder, said facility to have the capacity to process approximately 30,000 barrels per day of crude oil into energy fuels for in-state distribution and sale; and

WHEREAS, Seller has the right under each of the Leases identified in Exhibit "A" to this Agreement to be delivered or paid by the Lessee thereunder a royalty of twelve and one-half percent (12-1/2%) in kind (amount) or value of the crude oil production removed or sold from the lands covered by each such Lease; and

WHEREAS, the Lessees of such aforesaid Leases and other parties have represented to Seller that crude oil can be recovered from such Leases in significant quantities and that such Lessees intend to market such crude oil; and

WHEREAS, Seller is presently receiving royalty payments based on more than 90,000 barrels of crude oil per day from the aforesaid Leases and anticipates the quantity of such royalty oil payments to increase for the next year; and

WHEREAS, Seller is authorized by Alaska Statute 38.05.183 to sell such royalty oil; and

WHEREAS, Seller desires to sell royalty oil to Buyer and Buyer desires to purchase royalty oil from Seller under the terms and upon the conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the representations, covenants and conditions herein contained, Seller and Buyer hereby agree as follows:

ARTICLE I

DEFINITIONS

As used herein, the following terms shall have the following meanings:

1.1 "Affiliate" shall mean any person, firm, corporation or other entity affiliated with Buyer by means of a material direct or indirect ownership interest.

1.2 "Commissioner" means the Commissioner of Natural Resources of the State of Alaska.

1.3 "Date of First Delivery" means the date the first royalty oil sold hereunder passes the Point of Delivery.

1.4 "Day" means a period of twenty-four (24) consecutive hours beginning at 12:01 a.m., Alaska Standard Time.

1.5 "Effective Date" shall have the meaning defined in Article XI.

1.6 "Force Majeure" shall have the meaning defined in Article 15.2.

1.7 "Leases" or "Lease Contracts" means the oil and gas leases which are described in Exhibit "A" attached hereto and made a part hereof.

1.8 "Lessee" means any party owning a working interest in a Lease or Lease Contract.

1.9 "Month" means the period beginning at 12:01 a.m., Alaska Standard Time, on the first day of the calendar month and ending at the same time on the first day of the next succeeding calendar month.

1.10 "Oil" or "crude oil" shall have the same meaning as the word "oil" under the Prudhoe Bay Unit Agreement dated April 1, 1977, by and between the Seller and Lessees.

1.11 "Point of Delivery" shall have the meanings defined in Article III.

1.12 "Petrochemical Facility" shall have the meaning defined in Article 4.2.1.

1.13 "Total Project Costs" shall mean the aggregate of all sums and costs expended, incurred or contractually committed to be expended by Buyer, its Affiliates, direct and indirect beneficial shareholders, consultants, advisers and design, engineering and construction contractors in connection with responding to the requests

for proposal for the sale of royalty oil from the Leases; the preparation and execution of this Agreement; the performance of any and all obligations, transactions or events required by this Agreement; and the design, engineering and construction of the Petrochemical Facility or any portion thereof, all such costs to be measured from January 1, 1975. Total Project Costs shall also include (i) interest costs actually paid or accrued, and (ii) sums and costs expended, incurred or contractually committed to be expended by any city, borough or other governmental agency on any pollution control, sewage or water treatment, port, pipeline, terminal or other facilities, directly connected with or a part of the Petrochemical Facility, to the extent such facilities are utilized by the Petrochemical Facility. Any indirect or allocated costs shall be substantiated in writing to the satisfaction of the Commissioner.

ARTICLE II

QUANTITY PURCHASED AND SOLD

2.1 Sale of Prudhoe Bay Royalty Oil. Subject to the terms and conditions hereinafter provided, and subject to the prior obligations of Seller to deliver 5,000 barrels of crude oil per day under its contract with Golden Valley Electric Association, Inc. ("Golden Valley"), for the term and in the quantity now stated therein, Seller agrees to sell to Buyer, and Buyer agrees to buy from Seller, eighty-five percent (85%) of the total amount of Seller's royalty oil out of the crude oil production removed or sold from the Leases which the Seller has the right to take, and is available to the Seller for tak-

ing, in kind. Subject to the further provisions of Article 2.1, Seller reserves the right to use or dispose of the remaining fifteen percent (15%) in its discretion. After completion of the Petrochemical Facility, Seller's obligations to Golden Valley, if any, shall first be satisfied out of the fifteen percent (15%) portion of the oil from the Leases not being sold to Buyer hereunder. In addition to the crude oil deliverable under the other provisions of this Article 2.1, Buyer shall also possess the option to purchase an additional five percent (5%) of the total amount of Seller's royalty oil out of the Leases:

(a) in the event Seller enters into a contract with North Pole Refining Company ("NPR") granting NPR an option to purchase part or all of the fifteen percent (15%) portion of the oil out of the Leases not sold to Buyer under other provisions of this Article 2.1 and NPR does not exercise its option in full to purchase the oil on which it has an option, but Buyer's option to purchase shall extend only to the purchase of that quantity of oil from time to time not purchased by NPR; or

(b) in the event Seller does not enter into or have in effect a contract with NPR as recited in Article 2.1(a).

In the event it exercises its option under Article 2.1(a) or 2.1(b) above, Buyer agrees to give Seller an additional thirty (30) days notice of any nominations under this Article in addition to the time for notice specified in the Prudhoe Bay Unit Agreement. In the event under any agreement with NPR Seller obtains a right to purchase

from NPR any oil returned to the Trans Alaska Pipeline System by NPR, Seller shall assign all such rights to Buyer for the term of such NPR agreement.

Seller represents to Buyer that it has obtained sufficient advance written consents to termination and an agreement from Lessees (which to Seller's knowledge has been performed) to require similar consents from all subsequent purchasers agreeing to waive or terminate any supplier-purchaser relationship as to sufficient quantities of Seller's royalty crude oil out of the Leases to enable Seller to perform its delivery obligations under this Agreement.

2.2 Initiation of First Delivery. After the date Buyer has obtained the financing commitment referred to in Article 10.2(3)(d) and has furnished satisfactory evidence of same to Seller, Buyer shall have the right, subject to the further terms of this Article 2.2, to call for the initiation of delivery of crude oil under this Agreement by notifying Seller that Buyer seeks to initiate deliveries and stating the quantity desired, which such quantity shall be not less than one thousand (1,000) barrels per day. Initiation of deliveries, therefore, may occur prior to the date the Petrochemical Facility is completed and operational. Seller, within thirty (30) days after receipt of such notice from Buyer, shall deliver notice to all Lessees that it is exercising its right to take its royalty oil in kind and stating the quantity required to be delivered. In the event Seller shall obtain a modification of the Lease Contracts or Prudhoe Bay Unit Agreement to reduce the notice period required to less than six (6) months, the Date of First Delivery under this Agreement shall be reduced accordingly, but only upon sixty (60) days' prior written

notice of such time reduction to Buyer. Buyer agrees, in the event it calls for delivery of crude oil prior to the date the Petrochemical Facility is ready to process the crude oil, that it shall fully comply with its obligations under Article 26.6.

2.3 Certain Future Sales of Oil Taken in Kind by Seller. From and after the Effective Date, as to any royalty oil of Seller (other than royalty oil out of the Leases) taken in kind and proposed to be offered for sale, other use or disposition to third parties by Seller at a price or value which, when the reasonable costs of transportation of such royalty oil to the site of the Petrochemical Facility are added thereto, is less, on the date so offered, than the price stipulated in Article 8.1, plus the reasonable costs of transportation from the Point of Delivery to the site of the Petrochemical Facility, equitably adjusted to reflect quality and gravity differences between the crude oil offered to be sold and the crude oil from the Leases, Seller shall first offer to Buyer the opportunity to purchase ninety percent (90%) of the royalty oil proposed to be offered. Said oil shall be offered to Buyer at the same price, and on the same terms and conditions, as offered to third parties. The offer to Buyer shall remain open for sixty (60) days, after which time, if Buyer has not accepted the offer, Seller shall be free to sell the oil under the same terms and conditions to a third party. Seller may freely dispose of the ten percent (10%) portion of the royalty oil not sold to Buyer hereunder at such price and on such terms as Seller may desire. Notwithstanding the preceding provisions of this Article 2.3, Seller may freely sell any of its royalty oil otherwise subject

to this Article 2.3 free of the terms of this Article 2.3 so long as any such sales and deliveries of oil at a lower price, as defined above, cease and terminate on the date the Petrochemical Facility initiates processing of crude oil; further, the provisions of this Article 2.3 shall not apply to Seller's currently pending contract for the sale of oil out of the Leases to North Pole Refining Company nor to any renewal or renewals of the current contract of Seller with Tesoro Petroleum Company ("Tesoro") for a like quantity of oil as is now being delivered under Seller's contract with Tesoro. If Buyer purchases oil pursuant to the provisions of this Article 2.3, Buyer may reduce its purchases of royalty oil from the Leases by a like amount (and shall do so to the extent its aggregate purchases of all Seller's royalty crude oil under all provisions of this Agreement exceed 150,000 barrels per day, averaged monthly) during the period it is purchasing oil pursuant to this Article 2.3. Such reductions shall be effected in accordance with the restrictions of Article 2.5 and subject to Buyer's obligation to buy and receive such oil as it has previously nominated. Oil purchased pursuant to this Article 2.3 shall be deemed oil out of the Leases for the purposes of Article 14.1(ii) only.

2.4 Buyer Option in the Event Certain Quantities Not Delivered. Upon and after the inception of operation of the Petrochemical Facility, in the event at any time and from time to time Seller has not made available for delivery to Buyer for more than two (2) consecutive months average daily quantities (averaged monthly) of royalty crude oil from the Leases equal to or in excess of 145,000 barrels per day, upon written request by Buyer, Seller shall immediately exercise any option which it as lessor may then possess, as directed by Buyer, under any other lease or leases to receive its royalty crude oil in kind rather than in value in order that Buyer has the ability to receive from Seller 150,000 barrels of oil per day, with such prior notification to the lessees under such

other leases as may be required thereunder; provided, however, that the exercise of such option by Seller shall only apply to seventy percent (70%) of the available royalty oil to be taken in kind and only as to such quantity of royalty crude oil as may be necessary to assure Buyer of the availability of 150,000 barrels per day in the aggregate. To protect and insure Buyer's right to receive at least 150,000 barrels of crude oil per day hereunder, after the date of execution hereof and for the full term hereof, all contracts for the sale of any royalty crude oil of Seller taken in kind (except for Seller's currently pending contract for the sale of oil out of the Leases to North Pole Refining Company and except for any renewal or renewals of the current contract of Seller with Tesoro for a like quantity of oil as is now being delivered under Seller's contract with Tesoro) shall contain a provision that Buyer shall possess a paramount right to call for and receive such royalty oil in the event deliveries to Seller from the Leases and available for sale and delivery to Buyer fall below 145,000 barrels per day pursuant to the provisions of this Article 2.4. Notwithstanding any other provisions contained in this Article 2.4, Buyer's option hereunder shall extend only to seventy percent (70%) of the royalty oil production of any field, lease, or contract in which Seller has an interest. Seller agrees that any lease agreements and agreements for the sale of royalty crude oil taken in kind hereinafter entered into will include the advance written consent of the purchaser, exchange partner or other recipient of the crude oil to the termination of any supplier-purchaser relationship which may be deemed to exist

with respect to the State of Alaska royalty crude oil for purposes of any mandatory crude oil allocation program under applicable law or regulations of the Department of Energy or its successors then in effect upon the call therefor by Buyer under the provisions of this Article 2.4. In order to effectuate the purposes of this paragraph Seller shall furnish Buyer such information as Buyer reasonably requests from time to time concerning leases of which the State is Lessor and possesses the right to receive its royalty in kind. At such time as the average daily quantity of crude oil available to be delivered pursuant to the provisions of Articles 2.1 and 2.3 reaches or exceeds 150,000 barrels per day for more than two (2) consecutive months after such option has been exercised by Buyer, Seller shall have the right to terminate Seller's taking of royalty crude oil in kind under the other leases as described above in this Article 2.4, upon prior written notice which is thirty (30) days more than the period necessary to provide legal notice to Seller's lessees of Seller's return to taking its royalty in value rather than in kind, but on not less than ninety (90) days' written notice to Buyer. Thereafter, Buyer shall again be entitled to exercise its rights under this Article 2.4 should the aggregate average quantity of 145,000 barrels of crude oil per day available to be delivered under Articles 2.1 and 2.3 not be attained for more than two (2) consecutive months. If for any reason Buyer's election or elections to receive oil under this Article 2.4, along with the other obligations of Buyer to receive oil under this Agreement result in Seller being required to take from its Lessees or the lessees referred to in Articles 2.3 and 2.4

more than 150,000 barrels per day, Buyer will take all such oil from Seller and shall advise Seller so that Seller may give notice to its Lessees or lessees to reduce the quantities of oil it is taking in kind pursuant to Buyer's nominations to an aggregate of 150,000 barrels per day.

2.5 Increases or Decreases of Crude Oil. Notwithstanding any other provision of this Agreement to the contrary, after the Date of First Delivery and from time to time thereafter, Buyer shall have the right upon notice to Seller to require Seller to exercise its right under the Prudhoe Bay Unit Agreement (and under any other lease the oil from which is being sold to Buyer under Articles 2.3 and 2.4 if the terms of such lease so permit) to increase or decrease, by the terms of said Unit Agreement (or lease), the quantity of royalty oil to be delivered to Seller, and the quantity of royalty oil to be delivered to and purchased by Buyer under this Agreement shall be so adjusted; provided, however, that the provisions of this Article 2.5 shall not operate or be construed to require that Seller deliver and sell to Buyer the percentage portions of Seller's royalty oil out of the Leases or out of the leases referred to in Articles 2.3 and 2.4 which Seller has expressly reserved as not to be sold and deliverable hereunder, and further provided that Seller shall not be required to deliver more than 150,000 barrels per day hereunder as an average daily delivery during any calendar month. In addition to the time for notice specified in the Prudhoe Bay Unit Agreement (or any such other lease), Buyer agrees to give Seller an additional thirty (30) days' notice of any nominations under this paragraph. In order to provide maximum administrative efficiency, nominations

under this Article 2.5 shall be made not more than once every thirty (30) days.

2.6 Delivery of TAPS Fill by Seller. Upon initiation of deliveries pursuant to Article 2.2, Seller in addition to all other quantities of crude oil deliverable hereunder shall deliver to Buyer on or prior to the Date of First Delivery a sufficient quantity of crude oil for Buyer to fulfill its tariff obligations to supply Trans-Alaska Pipeline System pipeline fill and storage tank bottom requirements. Buyer shall pay for such quantity of oil on the date of termination pursuant to the provisions of Article IX, X or XIV hereof, at the price stipulated in Article VIII as if such oil had been delivered to Buyer at the Point of Delivery forty-five (45) days prior to the said date of termination. In the event that Buyer, prior to the completion of the Petrochemical Facility, suspends its purchase of oil from the Leases after having initiated deliveries and after Seller has delivered the pipeline fill and storage tank bottom requirements as provided by this Article 2.6, Buyer shall pay for such quantity of oil as if it had been delivered at the Point of Delivery on the date Buyer suspended its purchases. Thereafter Seller shall again be obligated to provide pipeline fill and storage tank bottom requirements upon Buyer's reinitiation of deliveries of oil out of the Leases as provided by other provisions of this Article II.

## ARTICLE III

## POINT OF DELIVERY AND PASSAGE OF TITLE

3.1 Point of Delivery. Delivery of the oil sold from

Seller to Buyer under Article 2.1 shall be made at the Seller's or Lessees' A.C.T. meter at the inlet inception point of the Trans-Alaska Pipeline System at Pump Station Number 1, Prudhoe Bay, Alaska. Delivery of any oil sold pursuant to the provisions of Articles 2.3 and 2.4 shall be at the same point of delivery that such oil is delivered to Seller by the lessee paying such oil as royalty oil in kind to Seller. Delivery under this Article 3.1 may be made at such other point or points of delivery as may be mutually agreed between Buyer and Seller. The Point or Points of Delivery set forth in this Article 3.1 shall hereinafter be referred to as the "Point of Delivery" or "Points of Delivery."

3.2 Passage of Title. Title to the oil to be sold hereunder shall pass from Seller to Buyer upon delivery.

3.3 Buyer's Responsibility. Buyer shall be responsible for the oil to be sold hereunder after passage of title hereunder. Buyer shall indemnify and hold Seller harmless from and against any and all claims, costs, damages, expenses or causes of action as a result of any loss, injury or damage incurred by any party as a result of any transaction or event which relates to the crude oil after title thereto has passed to Buyer. Buyer shall make all necessary arrangements for transporting the oil sold hereunder from the Point of Delivery.

## ARTICLE IV

## REPRESENTATIONS AND OBLIGATIONS OF BUYER

Buyer represents, warrants and agrees that:

4.1 Good Standing. Buyer is and at all times hereunder

will remain a corporation qualified to do business in, and in good standing with, the State of Alaska.

4.2 Construction of a Petrochemical Facility in the State of Alaska.

4.2.1 Construction Obligations. In consideration of the obligations assumed by each party herein, Buyer will proceed with reasonable diligence to design, construct, start up and thereafter initiate operation of a petrochemical manufacturing facility with fuels refining capacity in the State of Alaska. Such facility shall include facilities for the manufacture of energy fuels, aromatics, olefins and petrochemical derivatives of such basic feedstocks, and will include "offsite" facilities such as power supply, water supply, port facilities and administration buildings. Final process configuration and production rates of the various products listed above will be determined by (i) marketing considerations based on sales contracts for the products and (ii) process optimization of the overall facility design to produce the desired products in the most effective manner. Variations in process optimization will occur throughout the anticipated life of the facility. Such facilities shall be hereinafter referred to as the "Petrochemical Facility."

4.2.2 Siting of Petrochemical Facility. Buyer has chosen several preferred sites for the location of its Petrochemical Facility. Buyer shall notify the Commissioner no later than six (6) months after the Effective Date which site it has chosen (and the reasons for its choice of such site in reasonable detail), which

site shall be subject to the approval of the Commissioner within ninety (90) days after receipt of notice by Seller of Buyer's choice of site. In making his decision, the Commissioner shall consider, among other things, the desires of the people who live in the immediate surroundings of any proposed site. Failure of Buyer to receive written reply from the Commissioner within such ninety (90) day period shall be deemed an approval of the site selection; provided, however, that such approval shall in no manner diminish or alter Buyer's obligation to obtain all requisite state and federal permits, licenses and applications or to comply with other applicable laws or regulations. In the event the Commissioner disapproves a proposed site, Buyer shall resubmit with additional pertinent information its original proposed site or shall propose an alternate site to the Commissioner within ninety (90) days from the date Buyer receives notice of disapproval. Resubmissions or submissions of alternate sites shall continue in like manner until a site is approved by the Commissioner.

4.2.3 Progress Reports by Buyer. From the Effective Date and until the conditions stated in Articles 10.2(1) through 10.2(3) have been satisfied, on or before the twentieth (20th) day of each month, the Buyer shall furnish the Commissioner a written progress report as of the end of the preceding calendar month describing compliance with the requirements of Article 10.2, the engineering, design and construction activities of Buyer with respect to the Petrochemical Facility, progress in the marketing of the products therefrom, and the proposed financings and scheduled expenditures of the Buyer. After fulfillment of all the conditions stated

in Articles 10.2(1) through 10.2(3) and until all the conditions stated in Articles 10.2(4) through 10.2(9) have been satisfied, Buyer shall furnish like progress reports (also to be on the twentieth (20th) day of the month) each calendar quarter as of the end of the calendar month immediately preceding the month in which the report is made, beginning on the twentieth (20th) day of the third month next following the month during which the conditions under Articles 10.2(1) through 10.2(3) were fulfilled. Such reports, or portions thereof, shall be held confidential as requested by Buyer to the extent permitted by law.

4.3 Production of Energy Fuels for Intrastate Use. In order to provide fuels for distribution within the State of Alaska, Buyer shall design and construct the Petrochemical Facility to include a capacity to process 30,000 barrels of crude oil per day into energy fuels. If Buyer does not utilize the royalty oil sold and delivered hereunder, or traded or exchanged oil, in the Petrochemical Facility, then it shall utilize its best efforts to assure that at least 30,000 barrels per day of said royalty oil will be processed instate for production into energy fuels for intrastate distribution and sale, unless such processing would be surplus to the then prevailing intrastate domestic and industrial needs.

4.4 Establishment of Charitable Foundation. Buyer covenants and agrees to establish the Alaska Endowment Trust, the purpose of such trust being to further the social, educational, cultural and environmental conditions in the State of Alaska. The

Alaska Endowment Trust shall be established under the terms of a trust instrument proposed by Buyer and approved by the Governor of Alaska and Alaska Legislature; the trust corpus shall be administered by a Board of Trustees unaffiliated with Buyer. Trustees shall be appointed by the Governor of Alaska and confirmed by the Alaska Legislature. The corpus of the Alaska Endowment Trust shall be created from contributions by Buyer of amounts equal to five percent (5%) of the net after-tax profits, as hereinafter defined, realized from the operation of the Petrochemical Facility and sale of fuels and petrochemical products produced from the Petrochemical Facility. Each such annual contribution shall be paid on or before July 1 of each year based upon the net after-tax profits of the immediately preceding calendar year, the first such year of measurement to commence on January 1 next following ten (10) years after the Petrochemical Facility is completed, as measured by the delivery of the certificate of completion and operability by the prime contractor of Buyer in charge of construction of the Petrochemical Facility or sixteen (16) years after the Effective Date, whichever is earlier. "Net after-tax profits" shall mean the net income of Buyer prior to deduction or accrual of amounts payable under this Article 4.4 and shall be determined in accordance with generally accepted accounting principles applied on a consistent basis after deduction for all taxes which would have been provided for in the financial statements of Buyer for the year but for the payment of the amounts payable under this Article 4.4. Since the parties

have assumed that payments under this Article 4.4 will be deductible as an expense for purposes of any tax imposed on the income of Buyer, in the event any taxing authority does not permit such deduction, the amount payable hereunder shall be adjusted to reflect such non-deductibility. Charges made by or to any Affiliate shall be reasonable and shall not exceed those charges which would have been made in arm's length bargaining with an unaffiliated party in light of all the circumstances of the transaction, including the length of term of any contracts, financing terms and any other direct and indirect benefits offered or received. All sales between Buyer and any Affiliate shall be at a fair market price or value for such goods or services in light of all the circumstances, including the length of term of any contractual relationship, financing terms and any other direct or indirect benefits offered or received.

ARTICLE V

REPRESENTATIONS AND OBLIGATIONS OF SELLER

Seller represents, warrants and agrees that:

5.1 Seller's Royalty Oil. Pursuant to the Leases and the leases presently in effect and referred to in Article 2.4, Seller has the right to take its royalty in kind (amount), which royalty oil it represents is at least twelve and one-half percent (12-1/2%) of any crude oil production removed or sold from the Leases, unless otherwise described in Exhibit "A".

5.2 Title. Seller hereby warrants good and marketable title to the oil sold by it hereunder and its right to sell the same,

and warrants that all such oil is owned by Seller free from all liens, encumbrances and adverse claims.

5.3 Storage of Oil. Under Paragraph 13 of the Lease Contracts, Seller may be entitled, under certain conditions, to storage of Seller's royalty oil from Lessees free of charge. Seller hereby licenses to Buyer its storage rights, if any, under the Leases (and under any other leases the oil from which is being sold to Buyer pursuant to Articles 2.3 and 2.4) effective upon the Date of First Delivery, to the fullest degree permissible under the Lease Contracts and to an extent proportionate to the proportion of Seller's royalty oil being delivered hereunder. Seller further agrees that it will aid and work with Buyer to resolve any uncertainties or ambiguities concerning Seller's right to storage under the Lease Contracts, including the institution and pursuit of litigation at Buyer's cost to clarify Seller's legal rights of storage under said Paragraph 13. Buyer and Seller agree that their mutual objective shall be to maximize the Seller's and Buyer's rights to receive storage of the oil from the Lessees. Notwithstanding anything stated herein, Seller does not warrant that it possesses any right or rights to storage under the Lease contracts or any other leases. Buyer agrees that any failure to obtain storage hereunder from the Lessees shall not relieve Buyer of its obligations under Article 10.2. Buyer will indemnify Seller and hold it harmless against all claims, costs, loss or liabilities arising from Buyer's use of said storage facilities or rights.

5.4 Covenant to Aid in Obtaining Governmental Permits. In order to construct the Petrochemical Facility, Buyer must obtain numerous permits, licenses and authorizations from state, federal and other governmental authorities. Seller agrees to utilize its best efforts to support, lend aid and facilitate the grant or approval of Buyer's applications for such permits, licenses and authorizations; provided, however, that the obligations stated herein shall not require Seller to support, lend aid or facilitate the grant or approval of any permits, licenses and authorizations which do not comply with applicable rules, regulations or laws, and provided further that Seller's obligations herein shall not require Seller to waive, rescind, modify or otherwise alter (either in substance or procedure) any of Seller's regulatory responsibilities. Seller, acting through the Commissioner, within thirty (30) days after the Effective Date shall appoint a state official who shall act as Seller's coordinator for the purpose of facilitating the granting of permits by Seller and to act as a liaison officer for Buyer and Seller with the federal government. Such designation may be changed from time to time by the Commissioner.

5.5 Delivery of Information to Buyer. Seller shall deliver to Buyer without cost to Seller (unless any costs to Seller be indemnified by Buyer) within thirty (30) days after the Effective Date:

> (i) the most recent report it possesses or can obtain from third parties concerning the volume of hydrocarbons originally in place and the portions or fractions thereof which will be recovered from the Prudhoe Bay unit reserves, accompanied by any related studies or data pertaining to such report;

(ii) the most recent anticipated production schedules of oil, solution gas, gas cap gas and condensate in its possession or obtainable from third parties out of the Prudhoe Bay unit by year; and

(iii) the most recent information, projections or estimates in its possession or obtainable from third parties of anticipated crude oil discovery and production in Alaska during the term of this Agreement.

During the term of this Agreement, as reasonably requested by Buyer in writing, Seller shall furnish updated information pertaining to Subparagraphs (i) through (iii) of this Article 5.5. Certain information and documents, including but not limited to well logs and related production data pertaining to the Leases and other leases referred to in Articles 2.3 and 2.4 may be required by law or regulation to be held confidential by Seller, its representatives and agents, and such documents shall not be required to be delivered hereunder. Seller understands and acknowledges the importance of reports taken from such data in securing financing for the Petrochemical Facility, and Seller agrees to use its best efforts to obtain and furnish to Buyer all such relevant data and reports as requested by Buyer. Seller agrees to retain, at Buyer's cost, independent consultants acceptable to Buyer to review confidential data, to prepare such updated reports and to state such opinions as may be reasonably requested by and furnished to Buyer to the extent permitted by applicable law and regulation. Seller's obligations under this section are for the purpose of aiding Buyer in obtaining up-to-date information, some or all of which may have been furnished to Seller by third parties; accordingly, Seller does not, by provid-

ing Buyer with the information specified in Subparagraphs (i) through (iii), warrant or represent the accuracy of such information, nor does Seller obligate itself to attempt in any way to bring about the conditions or projections contained in the information provided.

ARTICLE VI

QUALITY

6.1 Standard. The oil to be delivered by Seller to Buyer at the Point of Delivery hereunder shall be the same quality as the oil delivered by the working interest owners from the Leases and the leases. Except for the foregoing, Seller does not warrant, represent or guarantee, either expressly or impliedly the quality, merchantability, fitness for use, or suitability for any particular use or purposes, or otherwise of any oil to be delivered to Buyer under this Agreement. There are no warranties, representations or agreements concerning the quality of the oil which extend beyond the description of the oil in this Article VI.

ARTICLE VII

MEASUREMENTS AND TESTS

7.1 Testing Standards and Procedures. The quantity and quality of the crude oil sold and purchased from the Leases shall be determined at Lessees' A.C.T. meters at Pump Station No. 1, Prudhoe Bay, Alaska. The quantity and quality of the crude oil sold and purchased from the other leases shall be determined at the lessee's point of delivery. All measurements hereunder shall represent one hundred percent (100%) volume, consisting of United States barrels of forty-two (42) gallons, the quantity and gravity of which shall be adjusted to a temperature of sixty degrees (60°) Fahrenheit. Full deduction

shall be made for all basic sediment and water content according to the ASTM Standard Method then in effect. Unless agreed otherwise between Buyer and Seller or set forth herein, procedures for measuring and testing and for metering the crude oil shall be completed in accordance with standard oil field practices. Procedures for metering deliveries under the Leases shall be in accordance with accepted oil field practices in effect at Prudhoe Bay, Alaska. At the direction of Buyer, Seller shall direct the Lessees or lessees to test the accuracy of their measuring equipment if and to the extent that the provisions of the Prudhoe Bay Unit Agreement or any other agreement between Seller and Lessees or lessees permit Seller to make such request. Notice of the time and nature of each test of Lessees' or lessees' measuring equipment shall be given by Seller to Buyer sufficiently in advance to permit convenient arrangement for Buyer's representative to be present. Tests and adjustments shall be made in the presence of representatives of Buyer if present at the time scheduled for such test and adjustment. At Buyer's election and subject to obtaining the permission of any necessary third parties, Buyer may also install equipment to measure or gauge all oil received by Buyer hereunder at the Point of Delivery, and Buyer shall bear the entire acquisition, calibration, maintenance and operating cost of any such loading, measuring or testing equipment required by Buyer.

7.2 Delivery of Crude Oil Samples by Seller. Upon reasonable request by Buyer, Seller at its cost shall utilize its best efforts to aid Buyer in obtaining a representative sample of one barrel of crude oil taken at Valdez, Alaska, in order for Buyer

to perform an assay to analyze the composition, gravity, sulphur content and other characteristics of such crude oil sample. If any sample of the oil is delivered to Buyer, there is no representation or warranty by Seller that any other oil delivered hereunder will conform to the sample, it being understood that Seller will deliver only such oil as shall be delivered to it by the Lessees or lessees under the Leases or leases. Seller shall provide Buyer copies of all other assays obtained or received by it during the term hereof.

ARTICLE VIII

PRICE

8.1 Price.

8.1.1 Price of Oil Delivered Out of the Leases. As to oil sold and delivered hereunder out of the Leases, the price to be paid by Buyer to Seller shall be equal to the sum the Seller would have received from the Lessees had Seller received its royalty in value instead of taking the quantity of royalty oil delivered hereunder as its royalty in kind (amount). Seller and Buyer recognize that the method and basis of computing the royalty due Seller from Lessees under the Leases is currently a matter of dispute and litigation among the Seller and its Lessees, said litigation being entitled State of Alaska, et. al. vs. Amerada Hess Corp. et al., (No. CA 77-847, Superior Court of the State of Alaska, First Judicial District at Juneau). Pending resolution of said dispute among Seller and Lessees, by judicial decision or settlement in the above-

referenced case, the in value royalty under the Leases, and therefore the price hereunder, shall be computed in accordance with Exhibit "B", attached hereto and by reference made a part hereof. After such time as said dispute shall be resolved among Seller and its Lessees, the parties hereto will be bound by the terms of such resolution, judicial or otherwise. Seller and Buyer expressly recognize that adjustment in prices previously paid may be necessary following said resolution and said adjustment shall be duly made, with interest, pursuant to the applicable provisions of Article IX. Any settlement agreement which agrees to the imposition of costs which are reimbursable by Buyer to Seller under Article 8.2, however, shall not be final and binding upon Buyer, unless Buyer has consented in advance to such settlement.

8.1.2 Price of Oil Sold Under Article 2.3. Oil sold pursuant to the provisions of Article 2.3 shall be the same lower price on the same terms and conditions as Seller is proposing to offer such oil.

8.1.3 Price of Oil Sold Under Article 2.4. The price of the oil sold pursuant to the provisions of Article 2.4 shall be the greater of (i) the best and highest price offered by a bona fide offeror for a like quality and quantity of the crude oil to be produced from such lease out of which oil is being delivered; or (ii) a price equal to the sum Seller would have received from its lessee or lessees had Seller received its royalty in value instead of taking the quantity of royalty oil delivered hereunder as its royalty in kind (amount).

8.2 Reimbursement of Certain Costs of Seller. In addition to the price stated in Article 8.1, Buyer shall also reimburse Seller for Seller's pro rata share of (i) any basic sediment and water removal costs if Seller is required to pay such costs as a result of Seller's election to take its royalty oil in kind; and (ii) any other direct costs reasonably incurred and paid by Seller which would not have been incurred by Seller had the Seller taken its royalty in value rather than in kind and if such costs under Article 8.2(i) and (ii) were not previously reflected in applicable computations of value for payments of royalty in value. Seller shall use its best efforts to minimize any such costs incurred by Seller by reason of Seller's taking royalty oil in kind; such best efforts shall include but not be limited to litigation in cooperation with and at the request of Buyer, at Buyer's cost, to the extent necessary to contest the imposition of unwarranted or improper charges; provided, however, that Seller shall in no event be required to advocate legal positions or adopt legal strategies which it, in its discretion, deems contrary to its own interests, in any such litigation. Seller at this date does not know of any potential costs to be incurred by it as a result of its taking in kind rather than invalue other than the costs stipulated in Article 8.2(i) above.

8.3 Minimum Taking in Value by Seller. In order to facilitate the establishment of prices under Article 8.1 Seller agrees at all times during the term of this Agreement to take and receive in value rather than in kind the minimum number of barrels per day required to obtain a report of the in-value price from each Lessee.



AGO 560136

8.4 Federal Price Regulation. In the event a maximum price is established by the federal government during the term of this Agreement which applies to the royalty oil and which is lower than the prices established under this Article VIII above, then Buyer shall pay the Seller that maximum price for royalty oil delivered to Buyer, but only during such period such maximum price is in effect.

## ARTICLE IX

## PAYMENTS AND ACCOUNTING

9.1 Billing. Seller shall furnish Buyer monthly, on or before the tenth (10th) business day of each month after the first full month of delivery of crude oil, a statement of account of all crude oil delivered through and measured at the Point of Delivery during the immediately preceding month according to the best information available to Seller, the price or prices applicable thereto according to the best information available to Seller, the basis for computation of the applicable price or prices in full detail and the total net amount due. Seller shall render its billings to Buyer based upon the values, receipts, costs and computations reported to Seller by the Lessees and the lessees referred to in Articles 2.3 and 2.4. Seller shall thereafter adjust its initial billings pursuant to Article 9.5. Buyer and its authorized agents shall be permitted access during reasonable business hours to Seller's books and records pertinent to this Agreement to determine the correctness of the billings of Seller to the extent not contrary to law.



AGO 560137

9.2 Payment. Buyer shall make payment on or before the twenty-fifth day of the calendar month in which such statement is rendered or fifteen (15) days after rendition of the invoice called for in Article 9.1, whichever is later, by direct wire transfer of federal reserve funds through the Federal Reserve Bank wire transfer system to the following address or such other address as Seller may designate upon seven (7) days' prior written notice:

Bank of America, NT & SA
San Francisco, California
Securities Department 3255
Credit to: State of Alaska
Investment Account

All other payments to be made under this Agreement shall be paid in the same manner. If payment is to be made on a Saturday, Sunday or legal holiday under the preceding provisions hereof, payment shall be made on the next following business day.

9.3 Billing Disputes. Should any portion of the account furnished to Buyer by Seller be disputed in good faith, Buyer and Seller agree to mutually arrive at a fair and equitable resolution of such dispute, if possible, and Buyer agrees to pay the amount so determined to be due to Seller within fifteen (15) days after such resolution. Buyer shall pay for such amounts as it does not in good faith dispute in accordance with the provisions of this Article IX.

9.4 Late Payment Charge. If Buyer fails to make timely payment to Seller of any amount due under this Agreement, including

any payment delayed by a bona fide dispute which is later determined to be validly owing, or if Buyer is required to pay and does pay any amount which is later determined not to be validly payable to Seller, interest shall accrue and be payable on said sum from the date when such payment was due or was paid, as the case may be, until the same is paid or repaid, at the lower of (i) a rate per annum equal to the prime rate then being charged by Chemical Bank of New York, New York, plus one and one-quarter percent (1-1/4%) per annum, or (ii) the maximum lawful rate of interest per annum which may be charged to Buyer under the laws of the State of Alaska.

9.5 Adjustments to Billings. Each month Seller shall adjust its statement of accounts to reflect the actual amounts delivered and the price or prices applicable thereto. Seller shall from time to time adjust its prior billings to reflect adjustments necessitated as a result of (i) a final judgment or settlement entered in certain pending litigation between Seller and the Lessees styled State of Alaska, et al. vs. Amerada Hess Corporation, et al., No. CA 77-847, in the Superior Court of the State of Alaska, First Judicial District at Juneau; (ii) adjustments necessitated as a result of the filing with the Seller by the Lessees or lessees of more current reports applicable to the billing period in question; (iii) actual adjustments necessitated as a result of changes to values, receipts, costs and computations previously reported by the Lessees or lessees and utilized by Seller as a basis for billing under Article 9.1, if such adjustments are based upon actual later severance tax or royalty

oil payments by or refunds to the Lessees or lessees; or (iv) adjustments required as a result of clerical or arithmetical errors in the billings of Lessees, of lessees, or of Seller; provided, however, that no adjustments, whether credits or debits, under Articles 9.5(ii) through 9.5(iv) shall be made by Seller or demanded by Buyer more than twelve (12) months after billing except as to matters which are the subject of (x) pending litigation by either party, (y) pending regulatory proceedings (or appeals thereof) whether or not Seller or Buyer is a party thereto, or (z) bona fide audits by Seller which audits have been terminated or completed by Seller within twelve (12) months after initiation of same.

Due to the potentially large sums of money involved, any adjustments to any billing under the provisions of this Article 9.5 by Seller made more than sixty (60) days after such billing was initially rendered shall be paid to or refunded by Buyer or Seller over the same period over which such adjustments accrued or thirty-six (36) months, whichever is longer, beginning with the first payment next following the date such adjustment has been determined; provided, however, no such payment extension permitted hereunder shall extend beyond the term stipulated in Article 10.1, and accordingly the full balance of any unpaid adjustments shall become due and payable on the termination date hereof.

9.6 Cancellation in Event of Non-Payment. Except for amounts disputed in good faith, should Buyer fail to make any payment due to Seller under this Agreement (i) within sixty (60) days

from the date said payment is due or (ii) within thirty (30) days from the date that Seller gives written notice of non-payment to Buyer in the manner provided in Article 16.1 hereinbelow (except that said notice shall be directed to the attention of the President of Buyer), whichever occurs earlier, this Agreement shall automatically be cancelled.

ARTICLE X

TERM

10.1 Term. Subject to the further provisions of Articles 10.2 and 10.3 this Agreement shall become effective on the Effective Date and except as extended by Article XV hereof shall continue and remain in force and effect for a period of twenty-seven (27) years from the Effective Date.

10.2 Termination by Seller. This Agreement shall terminate upon failure of Buyer to take each and every one of the following actions within the time specified for each, including any time extensions provided for in this Article 10.2:

(1) Within six (6) months after the Effective Date:

(a) Actually expend at least Two Million Dollars ($2,000,000.00) in Total Project Costs.

(b) Negotiate with interim lenders and obtain commitment to provide funds deemed necessary by Buyer for organizational costs and initial design costs of the Petrochemical Facility.

(c) Commence planning for optimization of design of the Petrochemical Facility.

(d) Notify Seller of Buyer's final selection of site location, such notification to be accompanied or preceded by site studies and recommendations based on preliminary engineering, including compression tests and cost estimates of infrastructure, offsite and marine facilities.

The Commissioner may extend the above six (6) month period as to Articles 10.2(1)(b), (c) and (d) thirty (30) days, but only in the event Buyer has, prior to such extension, fulfilled the requirements of Article 10.2(1)(a).

(2) Within twelve (12) months after the Effective Date:

(a) Actually expend at least Three Million Dollars ($3,000,000.00) in Total Project Costs.

(3) Within eighteen (18) months after the Effective Date:

(a) Expend or commit to expend or cause contractually bound third parties to expend or commit to expend at least Ten Million Dollars ($10,000,000.00) in Total Project Costs.

(b) Negotiate sale terms with prospective purchasers of products from the Petrochemical Facility; delineate product requirements, production ratios and quantities for the range of products to be produced from the Petrochemical Facility; and draft contracts for the sale of products from the Petrochemical Facility.

(c) Enter into contracts for the sale of at least seventy percent (70%) of the product output from the Petrochemical Facility.

(d) Obtain or cause contractually bound third parties to obtain written commitments to lend or invest at least One Billion Five Hundred Million ($1,500,000,000.00) in the aggregate for payment of Total Project Costs.

(e) Obtain a commitment or commitments for interim financing for the construction of the Petrochemical Facility.

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



AGO 560142

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

(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).

The Commissioner may extend the above eighteen (18) month period as to any one or more of the criteria or events stated in Articles 10.2(3)(a) through (h) six (6) months.

(4) Within twenty-four (24) months after the Effective Date:

(a) Expend or commit to expend or cause contractually bound third parties to expend or commit to expend at least One Hundred Million Dollars ($100,000,000.00) in Total Project Costs.

The Commissioner may extend the above twenty-four (24) month period as to the attainment of the criteria stated in Article 10:2(4)(a) six (6) months.

(5) Within thirty (30) months after the Effective Date:

(a) Execute definitive documents relating to the long-term loan of funds for the Petrochemical Facility.

(b) Commence construction of the Petrochemical Facility.

The Commissioner may extend the above thirty (30) month period as to one or more of the events or criteria stated in Articles 10.2(5)(a) and (b) above six (6) months.

(6) Within thirty-six (36) months after the Effective Date:

(a) Expend or commit to expend or cause contractually bound third parties to expend or commit to expend at least Six Hundred Million Dollars ($600,000,000.00) in Total Project Costs.

The Commissioner may extend the above thirty-six (36) month period as to the attainment of the criteria stated in Article 10.2(6)(a) six (6) months.

(7) Within forty-eight (48) months after the Effective Date:

(a) Expend or commit to expend or cause contractually bound third parties to expend or commit to expend at least One Billion Dollars ($1,000,000,000.00) in Total Project Costs.

The Commissioner may extend the above forty-eight (48) month period as to the attainment of the criteria stated in Article 10.2(7)(a) six (6) months.

(8) Within sixty (60) months after the Effective Date:

(a) Expend or commit to expend or cause contractually bound third parties to expend or commit to expend at least One Billion Two Hundred Million Dollars ($1,200,000,000.00) in Total Project Costs.

The Commissioner may extend the above sixty (60) month period as to the attainment of the criteria stated in Article 10.2(8)(a) nine (9) months.

(9) Within seventy-two (72) months after the Effective Date:

(a) Expend or commit to expend or cause contractually bound third parties to expend or commit to expend at least One Billion Five Hundred Million Dollars ($1,500,000,000.00) in Total Project Costs.

The Commissioner may extend the above seventy-two (72) month period as to the attainment of the criteria stated in Article 10.2(9)(a) twelve (12) months.

(10) In addition to the periods of time which the Commissioner may extend the periods for performance of the criteria stated in this Article 10.2, the Commissioner may further extend the time for performance of any of the criteria stated in Article 10.2(1) through 10.2(9) for that period of time necessary to permit the Commissioner and the Alaska State Legislature to consider an amendment or modification of this Agreement, particularly of the provisions contained in Article 10.2. Such time extension shall not, however, extend beyond a period of time in excess of ninety (90) consecutive days during which the Alaska State Legislature is in session, nor shall such time extension include a consecutive period of less than ninety (90) days during which the Alaska State Legislature is in session without the prior written consent of Buyer.

10.3 Termination by Buyer. In the event that Buyer after expending all reasonable efforts fails to obtain the necessary binding commitments from interim and permanent lenders for all the funds necessary to permit construction of the Petrochemical Facility under a loan or loans providing for repayment of such loans during the life of this Agreement or fails to obtain site approval from the Commissioner after submitting at least two sites to the Commissioner pursuant to Article 4.2.2, Buyer may thereupon elect to cease design and construction of the Petrochemical Facility and terminate this Agreement without liability to either party by giving Seller notice of termination; on the thirtieth (30th) day after the giving of such notice this Agreement shall terminate, and Buyer shall deliver to Seller all documents and data pertinent to the Petrochemical Facility (or

copies thereof) in its possession, including engineering and site selection information as may be reasonably requested by Seller.

## ARTICLE XI

## APPROVAL OF CONTRACT BY STATE OF ALASKA AND EFFECTIVE DATE

This Agreement shall take effect on the date on which this Agreement has been approved by concurrent resolution of a majority of each house of the Tenth Alaska State Legislature ("Effective Date").

## ARTICLE XII

## SECURITY

12.1 Creation of Security Interest. To secure payment of all amounts due Seller for oil sold hereunder, Seller retains and Buyer hereby grants a purchase money security interest in all of the oil delivered and to be delivered to Buyer hereunder and in all oil obtained by Buyer in exchange for oil purchased hereunder; the products made or processed from any such oil, including all substances, if any, commingled therewith, or added thereto; and in the proceeds of the sale of any such oil or products, including the accounts receivable of Buyer arising from its sales of oil or products manufactured therefrom. The security interest shall attach to the oil at the time and Point of Delivery but shall terminate as to oil or products therefrom sold to a bona fide purchaser of Buyer in the ordinary course of Buyer's business; provided, however, that the said security interest shall attach to the accounts receivable arising therefrom. Notwithstanding the provisions of this Article 12.1, Seller agrees that (i) the security interest in the oil shall not attach at the time and Point of Delivery but instead at the time the oil arrives and is delivered to Buyer at the outlet flange measuring device of the Valdez, Alaska terminal facility of the Trans-Alaska Pipeline System ("TAPS") as to any oil shipped under any tariff pertaining to the TAPS which contains a prohibition against carriage of oil on which a lien of a party other than the carrier thereof exists or which grants to any carrier the right to reject carriage of oil on which such a lien



AGO 560146

exists if Buyer has provided Seller a bond, letter of credit, marketable securities or other security, as described in Article 12.2 in an amount or of a value equivalent to the value of oil of Buyer in the TAPS on which no lien of Seller exists, unless Seller or Buyer has obtained and furnished for Buyer evidence that such prohibition or right of rejection has been effectively terminated or waived and is unenforceable; and (ii) no lien shall attach to any oil or products produced therefrom or accounts receivable created from the resale thereof as to which payments to Seller have been made for the account of Buyer if (a) such payments are not derived from the sale of property otherwise subject to the security interest of the Seller and (b) such payments are secured or are to be secured by such oil, such products or such accounts receivable. Seller agrees that any document filed to perfect Seller's purchase money security interest described in this Article 12.1 shall contain an exclusion to the effect set forth in the next preceding sentence. Buyer agrees that it shall not agree, or consent to, or permit the filing of, any lien or security interest in the oil other than the lien of a TAPS carrier nor shall it transfer title thereto prior to its arrival and delivery to Buyer at the outlet flange measuring device of the Valdez, Alaska terminal facility of the TAPS or prior to the attachment of Seller's security interest thereto upon such delivery. Buyer further agrees that it will not grant or consent to any security interest in the oil or other security in favor of any third party unless such third party agrees in writing prior thereto that such security interest is subordinate to the security interest of the Seller, except for the lien of a TAPS carrier or as provided otherwise in Article 12.1(ii). Buyer agrees to execute and file all documents necessary to perfect Seller's said security interest in the oil, proceeds from the oil and accounts receivable referred to above. "Proceeds of the sale" shall include proceeds derived from insurance or other payments resulting

from damage to or destruction of the oil or other property covered by the security interest. To secure such payment Buyer shall cause all policies of insurance on the oil or other property to which the security interest attaches to name the Seller as coinsured as its interests may appear.

12.2 Alternative Security. In lieu of the security interest provided in Article 12.1, Buyer may provide alternative security in the form of a bond attached hereto and made a part hereof as Exhibit "C", executed by the Buyer, as principal, and a corporate surety agreed to by the Commissioner and authorized to write such bonds in the State of Alaska, as surety for a sum which shall substantially reflect the amounts owed by Buyer to Seller plus an amount equal to the value of any oil delivered by Seller to Buyer and not yet billed pursuant to Article IX; provided that whenever Seller has reasonable grounds for asserting and does assert any claims against Buyer in excess of the penal sum of the bond of Buyer then in effect hereunder, Buyer after being so requested by Seller shall either increase the penal sum of such bond to an amount reasonably sufficient to cover the claim of Seller and all expenses which may be incurred by it in connection therewith or shall furnish other security satisfactory to Seller, such as a renewed security interest in the oil or a portion thereof sold hereunder, regardless of whether the Buyer does or does not recognize the validity of the Seller's claim (so long as reasonable grounds for asserting such claim exist). Buyer may at any time and from time to time deposit and maintain with the Commissioner at Buyer's expense in lieu of any such bond, either (i) an irrevocable letter or letters of credit addressed to the Commissioner issued by a state or national banking institution of the United States which is a member of the Federal Deposit Insurance

Corporation and has an aggregate capital and surplus of not less than $50,000,000, or (ii) marketable securities which are approved by the Commissioner, and which shall be transferable by the Commissioner or by delivery by stock power attached or other means, such letter or letters of credit to be in an aggregate amount, or such marketable securities to be of an aggregate then fair market value, of not less than the amount then required for Buyer's bond hereunder any such letter or letters of credit and marketable securities, together with any proceeds thereof, to be held by the Commissioner for the security and benefit of the Seller, and such letter or letters of credit or marketable securities along with instruments of transfer to be in form and substance approved by the Seller. The amount of said letter or letters of credit or marketable securities shall be subject to increase in the same manner that the face amount of the bond is subject to increase. If marketable securities are so furnished, other marketable securities which meet the requirements of this Subparagraph (a) may be substituted at any time and from time to time for any previously furnished marketable securities, and the marketable securities so furnished shall be increased if at any time the fair market value of the securities then held by the Commissioner is less than, or may be reduced if the fair market value thereof exceeds, the amount of the bond then required of Buyer hereunder. Buyer may, in lieu of any other security provide other security which in the opinion of the Commisioner is of equal value to the security above described.

ARTICLE XIII

TRADE OR EXCHANGE OF CRUDE

13.1 Subject to the provisions of Article 4.3 hereof and the further provisions of this Article 13.1, Buyer may trade or exchange any or all of the royalty crude oil for other crude oil or products. No trade or exchange by Buyer shall reduce the price to be paid to Seller under Article VIII hereof, and any such trade or exchange shall be without cost or expense to Seller. Buyer agrees not to trade or exchange royalty oil with another party unless that party agrees to give Buyer written permission to terminate the trade or exchange relationship upon the termination of this Agreement. Buyer shall require of any trade or exchange partner specific acknowledgment of Buyer's obligations under Article 26.6 and written permission from Buyer's trade or exchange partner to terminate the trade exchange arrangement upon termination of this Agreement. Buyer shall also require of its trade or exchange partner that it agrees to include provisions similar to this section in contracts for the sale, trade or exchange of the royalty oil and that all subsequent purchasers and trade or exchange partners will do likewise.

ARTICLE XIV

DEFAULT

14.1 Default. If

(i) either party shall fail to perform any of the covenants or obligations imposed upon it by this Agreement, except when such failure shall be excused under the force majeure provisions of Article XV, or

(ii) for any period of six (6) consecutive months, beginning one (1) year after the Petrochemical Facility has initiated processing of crude oil into petrochemicals, and subject to the provisions of Article XV, Buyer fails to purchase in the aggregate at least one-third (1/3) of the crude oil which could be purchased by Buyer out of the Leases and the leases referred to in Article 2.4 during any calendar month, or

(iii) Buyer becomes insolvent or commits any act constituting an act of bankruptcy, or

(iv) Buyer voluntarily files an action under the United States Bankruptcy Act, or

(v) Buyer fails to obtain the dismissal of any involuntary bankruptcy proceeding filed against it under the provisions of the United States Bankruptcy Act within thirty (30) days of the filing thereof,

then and in any such event, the other party may, at its option and without waiving any other remedy for breach hereof, indicate such party's election to cancel this Agreement by notice in writing specifying in detail wherein the default has occurred. Except for the instances stipulated in Articles 14.1(iii) through (v) above, and except for payment by Buyer to Seller, which shall be governed by Article 9.6, the party in default shall have thirty (30) days from the receipt of such notice to remedy such default and to pay the other party for all loss or damage incurred as a result of such default and indemnify such party against future claims or loss arising out of such default. Upon failure of the defaulting party to remedy its breach within the time stipulated above, this Agreement may be cancelled by the non-defaulting party by service of written notice thereof upon the defaulting party. Any cancellation under Article 9.6 or this Article 14.1 [except Article 14.1(ii)] shall not

prejudice the right of the party not in default to collect any amounts due it hereunder for any damage or loss suffered by it and shall not waive any other remedy to which the party not in default may be entitled for breach of this Agreement.

14.2 Disposition of Oil Upon Default, Cancellation or Termination. It is agreed that if Buyer shall for any reason fail to take the royalty oil hereunder as and when made available to the Buyer pursuant to Buyer's previous nominations, Buyer shall nevertheless pay Seller as though it had taken delivery of said royalty oil, unless Seller through an understanding with Lessees or the lessees referred to in Articles 2.3 and 2.4 is able to cancel delivery of the quantities called for in said nominations of Buyer. In the event of any cancellation or termination of this Agreement, whether under Articles 10.2 or 10.3, or because of default under this Article XIV or Article 9.6, Buyer shall have an obligation to continue to purchase Seller's royalty oil for up to seven (7) months following termination or cancellation of this Agreement in such quantities as Buyer has elected pursuant to the nomination procedure set forth in Article 2.5 in the six (6) months preceding termination of this Agreement, if Seller is required by the Lessees or the lessees under Articles 2.3 and 2.4 to accept delivery in kind for such period.

14.3 Materiality of Breach. No default or breach of, or failure of performance under, this Agreement shall be deemed to have occurred under this Agreement unless such default, breach or failure of performance is material or substantial under all the cir-

cumstances or involves the non-payment of any sum due under this Agreement which is not the subject of a bona fide dispute.

ARTICLE XV

FORCE MAJEURE

15.1 Relief from Obligations. Except for Buyer's and Seller's obligations to make payment under this Agreement and except for Buyer's obligation to take oil nominated by it, neither party hereto shall be liable for any failure to perform the terms of this Agreement when such failure is due in whole or substantial part to a "force majeure" as hereinafter defined; provided, however, that if an event constituting a force majeure shall prevent substantial performance of a party's obligations hereunder in light of all the circumstances, so as to prevent the party not claiming force majeure from obtaining the benefit of its bargain for a period in excess of four (4) years, said party not claiming force majeure shall have the option to terminate this Agreement. Said option must be exercised before the force majeure ceases to exist. The aforesaid proviso shall not permit the Seller to terminate in the event the force majeure in question is based upon Buyer's inability to obtain requisite state permits, authorizations, or licenses if Buyer has exercised the due diligence required by Article 15.2(ix). Other remedies otherwise available for default or breach in the event of termination after such four year period shall not thereby be affected.

15.2 Definition of "Force Majeure". The term "force majeure" as employed in this Agreement shall mean (1) acts of God;

(ii) strikes, lockouts or industrial disputes or disturbances; (iii) civil disturbances, arrests and restraint from rulers or people; (iv) interruptions by laws, orders, rules, regulations, acts or restraints of any government or governmental body having proper jurisdiction; (v) acts of the public enemy, wars, riots, blockades, insurrections, mobilization; (vi) acts of vandalism or sabotage; (vii) shortages, scarcity or inability to secure labor, fuel, power, equipment or materials (including inability to secure materials by reason of allocation promulgated by authorized governmental agencies), (viii) inability or failure of contractors or subcontractors to perform, (ix) inability to obtain requisite federal, state or other governmental permits, authorizations, or licenses provided the party claiming force majeure has exercised due diligence in attempting to obtain such permits, authorizations or licenses; (x) inability to ship materials because of unavailability of shipping, docking or wharfage not within the reasonable control of the party claiming the existence of a force majeure; (xi) epidemics, landslides, lightning, earthquakes, fire, explosion, floods, washouts, storms, other unusual adverse weather conditions; (xii) breakdowns of machinery, equipment or lines of pipe; (xiii) freezing of wells, pipe lines or other equipment; (xiv) shutdowns necessary for making repairs or alterations to pipe lines or plants, mechanical failure, or the necessity of testing wells, machinery or lines of pipe as may be required by governmental authority or as may be deemed necessary by the testing party for the safe operation thereof whether or not

of the kind herein enumerated; or (xv) any other event or condition otherwise not reasonably within the control of the party claiming force majeure, whether or not similar to the enumerations of (i) through (xiv).

15.3 Effect of Force Majeure. Upon the occurrence and discovery of an event constituting force majeure, the party claiming that the event is a force majeure shall notify the other party hereto of its claim of force majeure. The party claiming the existence of a force majeure shall, so far as reasonably possible, attempt to remedy such event with due diligence, and the obligations of the disabled party to perform under this Agreement, insofar as they are affected by such force majeure, shall be suspended from the time such force majeure occurs and for so long as the disability so caused should have continued had the party claiming the existence of the force majeure met its remedial obligations under this Article 15.3, and for no longer. The settlement of strikes or lockouts or industrial disputes or disturbances shall be entirely within the discretion of the party having the difficulty, and the above requirement that any force majeure shall be remedied with due diligence shall not require the settlement of strikes, lockouts or industrial disputes or disturbances by acceding to the demands of any opposing party therein when such course is inadvisable in the sole discretion of the disabled party.

ARTICLE XVI

NOTICES

16.1 Notices. Any notice, request, demand or statement provided for in this Agreement must be in writing, and may be given by depositing same in the mail, addressed to the party to be notified, postage prepaid, and registered or certified, with a return receipt requested, or by delivery of same in person to such other party. Notice deposited in the mail in the manner hereinabove described shall be effective upon the expiration of seven (7) days after it is so deposited. Notice given in any other manner shall be effective only if and when received by the addressee. For purposes of notice the addresses of the parties hereto shall be as follows:

If to Seller:

State of Alaska
Commissioner of Natural Resources
Pouch "M"
Juneau, Alaska 99811

and
Commissioner of Revenue
Pouch "S"
Juneau, Alaska 99811

and
Director, Division of Minerals
and Energy Management
323 Fourth Street
Anchorage, Alaska 99501

If to Buyer:

Alaska Petrochemical Company
601 W. 5th Avenue, #320
Anchorage, Alaska 99501

and
Alaska Petrochemical Company
P. O. Box 6554
Houston, Texas 77005



AGO 560156

16.2 Change of Address. Each party may change its address for notice by giving notice thereof in the manner hereinabove provided.

ARTICLE XVII

WAIVER

The failure of Seller or Buyer to insist upon strict performance of any provision hereof shall not constitute a waiver of, or estoppel against asserting, the right to require such performance in the future; a waiver or estoppel in any one instance shall not constitute a waiver or estoppel with respect to a later breach of a similar nature or otherwise; and a course of performance established by a party shall likewise not estop the other party from complaining of a later breach similar in nature.

ARTICLE XVIII

RECORDS

18.1 Preservation of Records. Buyer and Seller will preserve and maintain all books, accounts and records relating to or arising out of the performance of this Agreement, including but not limited to, the planning, construction and operation of the Petrochemical Facility and the purchase or resale of the royalty oil and its refined products for a period of four (4) years. Buyer will also maintain and preserve all similar books, accounts and records of which it has possession belonging to those third parties with whom it contracts for the performance of various parts of this Agreement. Neither Buyer nor Seller shall be required to retain



AGO 560157

any records for more than six (6) years unless retention of such records is specifically required by applicable law or regulation. Buyer shall either maintain its records within the State of Alaska or make such records available to Seller at Buyer's principal office in the State of Alaska within thirty (30) days after written request therefor by Seller.

18.2 Inspection of Records of Parties. Buyer and Seller will accord to each other and to their authorized agents, attorneys and auditors during reasonable business hours access to any and all property, records, books, documents and indexes thereto directly relating to the Buyer's or Seller's performance of this Agreement and which are under the control of the party from which access is desired so that the other party may inspect, photograph and make copies of such property, records, books, documents and indexes thereto. Notwithstanding the foregoing, (i) Seller shall not be required to disclose any information, data or records which are required to be held confidential by applicable state law or regulation, and (ii) Buyer shall not be required to disclose any information, data or records containing trade secrets which Buyer or its Affiliates, contractors or subcontractors by contract with unaffiliated third parties have agreed to hold confidential. Seller shall notify Buyer of all information obtained, recorded or copied from Buyer's records in order that Buyer may evaluate the advisability of seeking that such information be held confidential by Seller under applicable law or regulation or under the provisions of this Article.

18.3 Financial Statements. So that Seller may be fully informed with regard to Buyer's financial capabilities on an on-going basis, Buyer will provide Seller with a financial statement at quarterly intervals during any periods which Buyer is receiving delivery of oil under this Agreement from Seller. In addition, Buyer will provide Seller with year-end financial statements audited by an independent certified public accounting firm. Preparation of the financial statements shall be at Buyer's cost. Said statements shall be communicated to Seller in the manner provided in Article 16.1.

## ARTICLE XIX

## RULES AND REGULATIONS; SOVEREIGN POWERS; ENVIRONMENTAL REGULATION AND STANDARDS

19.1 Applicable Laws, Rules and Regulations. This Agreement and the covenants contained herein shall not be interpreted as a limit on the exercise by the State of Alaska of any of its sovereign or regulatory powers, whether inherent or as may be set forth by constitution, statute or regulation, to protect the environment, fish and wildlife, or the health, safety, general welfare, lives or property of the people, of the State of Alaska. This Agreement is subject to all present and future valid laws, orders, rules and regulations of the United States, the State of Alaska, or any duly constituted agency thereof; provided, however, that this paragraph shall not be deemed a consent to any attempted alteration, amendment, termination or revocation of the contractual rights, obligations or duties of the parties hereto by the State of Alaska.

19.2 Compliance with State Rules and Regulation. Buyer



AGO 560159

shall comply with all valid and applicable laws and regulations with regard to maintaining the quality of the environment of the State of Alaska, the well-being of fish and wildlife of the State, and the health, safety and welfare of the citizens of the State of Alaska in the construction of the Petrochemical Facility, the operation and maintenance of the Petrochemical Facility during the term hereof, and with respect to Buyer's purchase, refining and resale of the oil sold hereunder.

19.3 Compliance with Supplemental Environmental Standards. Buyer agrees to comply with the environmental protection standards set forth in Exhibit "D", whether or not such standards are required presently or in the future by applicable governmental law or regulation; provided, however, that the Commissioner of the Department of Environmental Conservation shall possess the power and authority to waive or eliminate any such standards upon a showing of reasonable cause, and provided further that the standards set forth in Exhibit "D" are supplemental to, and not substitutive of, any present or future laws or regulations applicable to regulation of the environment of the State of Alaska.

## ARTICLE XX

## GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of Alaska, excluding any conflicts-of-law rule or principle which might refer such construction to the laws of another state or country.



AGO 550160

ARTICLE XXI

SEVERABILITY

If any of the terms and conditions of this Agreement are held by any court or governmental authority of competent jurisdiction to contravene or to be invalid under the laws of any political body having jurisdiction over the subject matter hereof, such contravention or invalidity shall not invalidate the entire Agreement. Instead, this Agreement shall be construed as if it did not contain the particular provision or provisions held to be invalid, the rights and obligations of the parties hereto shall be construed and enforced accordingly if feasible, and this Agreement shall thereupon remain in full force and effect.

ARTICLE XXII

AMENDMENT

This Agreement may be supplemented, amended or modified only by a written instrument duly executed by both the parties hereto after proper prior authorization, including approval by the Alaska Royalty Oil & Gas Development Advisory Board and the Alaska State Legislature. Buyer agrees that in the event Article VIII of this Agreement is subsequently amended so as to materially reduce the consideration paid to the Seller, directly or indirectly, for the royalty oil, said amendment will only be effective after it has been approved by a direct vote of the people of the State of Alaska.

ARTICLE XXIII

SUCCESSORS AND ASSIGNS

23.1 General Prohibition of Assignment. Except as otherwise permitted under Article 23.2 no assignment of this Agreement shall be made by either party without first obtaining the written consent of the other party. The Commissioner may grant such consent on behalf of Seller.



AGO 560161

23.2 Limited Right of Assignment. This Agreement shall bind and benefit the parties hereto and their respective successors and valid assigns, but no permitted conveyance or transfer of any interest of either party shall be valid until such other party has been furnished with written notice and a true copy of such conveyance or transfer and an assumption, if any, of this Agreement by such assignee. Either Buyer or Seller, or both, may assign its right, title and interest in, to and by virtue of this Agreement, including any and all extensions, renewals, amendments and supplements thereto to a trustee or trustees, individual or corporate, or to any lender or lenders, as security for bonds or other indebtedness, obligations or securities, without such trustee or trustees or lender or lenders assuming or becoming in any respect obligated to perform any of the obligations of the assignor, and if any such trustee or lender be a corporation, without its being required by the parties hereto to qualify to do business in the State of Alaska (but such trustee or lender shall be required to submit to the jurisdiction of the courts of the State of Alaska for matters relating to this Agreement), and no such assignment shall serve to relieve the assigning party of its obligations hereunder. Any assignment by Buyer pursuant to the next preceding sentence shall be subject to the prior written approval of the Commissioner of any such trustee or trustees or lender or lenders; provided, however, that on or after the date that all the conditions stated in Article 10.2(3) have been fulfilled, no such prior written approval shall be

required and such assignment to such trustee or trustees or lender or lenders may be freely made. In the event any such trustee or trustees, lender or lenders, or their assignee shall foreclose upon or otherwise assume ownership rights in and to this Agreement, thereupon such trustee or trustees or lender or lenders and their valid successor and assigns (i) shall assume such rights and benefits as well as obligations and liabilities only upon written notice given by it or them to Seller, (ii) shall have the right to receive from Seller, without assuming any obligations or liabilities under this Agreement, except as expressed below in the last sentence of this paragraph, any money or property owed by Seller to Buyer under this Agreement as of the date of such foreclosure, (iii) shall have the right to sell or assign their ownership rights to this Agreement to any person, without the consent of the Seller if such person assumes the obligations of Buyer under this Agreement, and (iv) following such further sale or assignment, shall be relieved of any obligations or liabilities provided for under this Agreement. Nothing contained within this Article 23.2 shall operate so as (1) to terminate or subordinate Seller's security interest in oil, products, proceeds of the sale, or (2) to cancel any obligation to provide security as set forth in Article 12.2, until money owed to Seller under this Agreement is paid.

## ARTICLE XXIV

## EQUAL EMPLOYMENT OPPORTUNITY

24.1 Discrimination. Buyer will not discriminate against



AGO 560163

any employee or applicant for employment because of race, color, religion, national origin, ancestry, age or sex. The Buyer will take affirmative action to insure that applicants are considered for employment, and that employees are treated during employment, without regard to their race, color, religion, national origin, ancestry, age or sex. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Buyer agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

24.2 Advertisement of Equal Employment Opportunity. The Buyer shall state, in all solicitations or advertisements for employees to work, that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, ancestry, age or sex.

24.3 Notices to Unions. The Buyer will send to each labor union or representative of workers with which the Buyer has a collective bargaining agreement or other contract or understanding a notice advising the labor union or workers' representative of the Buyer's commitments under this Article and shall post copies of the notice in conspicuous places available to all employees and applicants for employment.

24.4 Inclusion of Equal Employment Opportunity Provisions

in Contracts and Subcontracts. The Buyer will include the provisions of Article 24.1 through 24.3 in its contracts pertaining to the construction and operation of the Petrochemical Facility and will require the inclusion of these provisions in every subcontract entered into by any of its contractors, so that such provisions will be binding upon each subcontractor of Buyer.

24.5 Cooperation with Agencies of Seller. The Buyer agrees that it will fully cooperate with the office or agency of the State of Alaska which seeks to deal with the problem of unlawful or invidious discrimination, and with all other State efforts to guarantee fair employment practices under this Agreement, and Buyer will comply promptly with all reasonable requests and directions from the State Commission for Human Rights or any of its officers or agents relating to prevention of discriminatory employment practice. Full cooperation as expressed above shall include, but not be limited to, being a witness in any proceeding involving questions of unlawful or invidious discrimination if such is deemed necessary by any official or agency of the State of Alaska; permitting employees of Buyer to be witnesses or complainants in any proceeding involving questions of unlawful or invidious discrimination, if such is deemed necessary by any official or agency of the State of Alaska; participating in meetings; submitting periodic reports on the equal employment aspects of present and future employment; assisting in inspection of the Petrochemical Facility site during and after the construction; and promptly complying with all

directives deemed essential by any office or agency of the State of Alaska to insure compliance with all federal and state laws, regulations and policies pertaining to the prevention of discriminatory employment practices.

ARTICLE XXI

LOCAL HIRE AND TRAINING

25.1 Local Hire.

(1) Buyer will comply with all applicable Alaska statutes and regulations in effect at the time this Agreement becomes effective as well as all amendments thereto and subsequent enactments providing for local or resident hire.

(2) In addition, and subject to compliance with other requirements of state or federal law or regulation, Buyer will give preference to hiring qualified and available residents over nonresidents for all work to be performed in the construction, operation and maintenance of the Petrochemical Facility. Buyer shall not discriminate against Alaska residents by differentiating between residents and nonresidents in payment of wages, salaries, fringe benefits and working conditions. Nothing shall prohibit the Buyer from hiring Alaska residents through private sources. However, if private sources are unable to supply qualified Alaska residents, Buyer shall then attempt to seek qualified Alaska residents through the Alaska Department of Labor prior to the employment of nonresidents. The Buyer shall allow said Department of Labor two days, excluding Saturday, Sunday and state holidays, to produce

qualified resident workers prior to the employment of nonresidents. If suitable resident workers are not provided within the specified time period, the Buyer may employ nonresidents possessing the qualifications necessary to perform the work. Notwithstanding the foregoing, the Buyer may hire nonresidents (i) on an emergency basis for the duration of any emergency, (ii) as casual or intermittent employees if their employment will not exceed thirty (30) working days, or (iii) as specially skilled employees when the Department of Labor agrees in advance that such specially skilled persons are unavailable within the State of Alaska.

(3) Buyer will use its best efforts to incorporate in any and all collective bargaining agreements into which it enters with labor unions covering work to be performed in the construction, operation and maintenance of the Petrochemical Facility and associated facilities and operations, a provision or provisions requiring the unions' dispatch procedures be established and operated in a manner which will assure that qualified Alaska residents will be employed to perform said work.

(4) Buyer will incorporate in any and all agreements into which it enters with contractors and subcontractors provisions requiring the employment of qualified Alaska residents, as set forth in Article 25.1(2), and utilization of the contractors' or subcontractors' best efforts to obtain agreements with labor unions, as specified in Article 25.1(3).

(5) Noncompliance with the preceding covenants of

this Article 25.1 or of Article XXIV shall be grounds for a complaint which an aggrieved resident or the State of Alaska, on its own motion, may file with the Department of Labor against the Buyer, but shall not be considered a default under Article XIV. Buyer hereby agrees to submit to the jurisdiction of the Department of Labor for purposes of determining whether noncompliance in fact occurred. Said Department shall hold a hearing at which the parties may present relevant evidence and cross-examine witnesses prior to such a determination. Adequate notice thereof shall be given to all parties concerned. Upon a determination that noncompliance occurred, the Buyer shall pay the aggrieved party a sum equal to the amount the resident would have received had he been employed by the Buyer, up to a maximum of one (1) year's salary. If such compliance is determined to have been willful, the Department may award an additional sum up to the amount of the original sum awarded.

(6) For purposes of this Article

(a) "resident" means a person who

(i) except for brief intervals, military service, attendance at an educational or training institution, or for absences for good cause, is physically present in the state for a period of one year immediately before the time his status is determined;

(ii) maintains a place of residence in the state;

(iii) has established residency in the state;

(iv) has not, within the period of required residency, claimed residency in another state; and

(v) shows by all attending circumstances that his intent is to make Alaska his permanent residence;

provided, however, that in the event a final judgment is rendered by a court of competent jurisdiction in the State of Alaska that the one year period stated in Alaska Statutes Section 38.40.090 is unconstitutional because of the length of time, the one year period stated in this subparagraph shall be reduced to such period as is constitutionally acceptable;

(b) "qualified" means capable, through education, training or experience, of performing the duties and satisfying the usual terms and conditions of the employment, if those duties, terms and conditions meet the reasonable standards of the industry as required of other employees performing the same type of work in the industry;

(c) "willful noncompliance" means intentionally, knowingly, or purposely, without justifiable excuse, not giving preference to qualified Alaska residents in employment covered by this section; and

(d) "noncompliance" means not giving preference to qualified Alaska residents in employment covered by this Article 25.1.

(7) The performance of this Article 25.1 shall not be interpreted to require any action which constitutes the violation of any federal or state law or regulation, particularly those relating to discrimination in hiring.

25.2 Local Training. Buyer, in order to effectuate the purposes of Article XXIV and Article 25.1, and in order to insure the maximum practicable employment of Alaska residents in the operation and maintenance of the Petrochemical Facility, shall initiate training programs to provide skilled local personnel and adequately trained residents to apply for permanent employment in the operation and maintenance of the Petrochemical Facility. Buyer shall establish and furnish to Seller its employment requirements for the operation and maintenance of the Petrochemical Facility, including the approximate numbers of employees and identification of the types of skills needed, in sufficient time (but not more than one year) for Seller and Buyer to design and conduct its training programs in the skills required. In pursuing such programs, Buyer intends to and shall seek the support and financial aid of other groups and agencies, to wit: the federal government, Seller, municipal and local authorities, unions, and certain native Alaskan corporations. Seller will provide Buyer with reasonable assistance in the design and administration of the training program. Due to the difficulty of establishing objective criteria to insure that adequate effort has been expended by Buyer and because Buyer expects Seller to join with it in establishing such training programs and obtaining funds therefor from a variety of governmental sources, including Seller itself, Buyer's obligations under this program shall be deemed fulfilled in the event that Buyer has expended $500,000 on such training programs or, in the alternative, that an aggregate of $1,000,000 has

been expended from all sources (including all federal, private and state funds) on such training programs on or prior to ten (10) years from the Effective Date.

25.3 Infrastructure Development. Buyer agrees to use its best efforts to coordinate construction of the Petrochemical Facility with local municipal and borough authorities in order that development of supporting residential, service and other aspects of infrastructure may be coordinated. To that end, Buyer shall seek to arrive at mutually satisfactory solutions with municipal and borough governments to the perceived heavy demand on the physical plant and services of neighboring communities as a result of the construction and operation of the Petrochemical Facility.

ARTICLE XXVI

MISCELLANEOUS

26.1 Exhibits. Exhibits "A" through "D", which are attached to this Agreement, are by this reference incorporated into and made a part of this Agreement.

26.2 Headings. The headings of this Agreement are inserted for convenience and identification only and are not intended to describe, interpret, define or limit the scope, extent or intent of this Agreement or any provision hereof.

26.3 Gender. Whenever the context requires, the gender of all words used in this Agreement shall include the masculine, feminine and neuter, and the number of all words shall include the singular and the plural.



AGO 560171

26.4 Counterparts. This Agreement may be executed in any number of counterparts with the same effect as if Seller and Buyer had signed one document. All counterparts shall be construed together and shall constitute one and the same instrument.

26.5 Additional Documents. In connection with this Agreement, as well as all transactions contemplated by this Agreement, Seller and Buyer agree to execute and deliver such additional documents and instruments and to perform such additional acts as may be necessary or appropriate to effectuate, carry out and perform all the terms, provisions and conditions of this Agreement and all such transactions.

26.6 Supplier-Purchaser Relationship. Buyer and Seller each agree to take all action reasonably necessary or appropriate to effect the transactions contemplated by this Agreement and each party's performance of its obligations hereunder. In the event that this Agreement is canceled or terminated by any party pursuant to the terms hereof, Seller and Buyer hereby agree to waive any rights which either party may have to a continuation of any supplier-purchaser relationship that may have been established with respect to the State of Alaska royalty crude oil for purposes of any federal mandatory crude oil allocation program. Specifically, the Buyer expressly states and the Seller agrees that the consent given in the immediately preceding sentence is such a consent to the termination of any supplier-purchaser relationship between the Seller and the Buyer which may be deemed to exist



AGO 560172

under the Federal Mandatory Petroleum Allocation Regulations (10 C.F.R., Part 211) as is provided in 10 C.F.R. 211.63(d)(1)(i) of such Regulations. Seller and Buyer also agree that any subsequent contracts for the sale, exchange or other disposition of the State of Alaska royalty crude oil that may be entered into by the Buyer or Seller herein will include the advance written consent of the purchaser, exchange partner or other recipient of the crude oil to the termination of any supplier-purchaser relationship which may be deemed to exist with respect to the State of Alaska royalty crude oil for purposes of any mandatory crude oil allocation program upon the expiration, cancellation or termination of the underlying contractual agreement for the sale, exchange or other disposition of the crude oil or in the event that the agreement between the Seller and the Buyer for the sale and purchase of the crude oil is terminated for any reason, including termination for default as stated in Articles IX and XIV or because Buyer fails to meet its obligations under Article 10.2. Buyer also agrees to include in any contracts for the sale, exchange or other disposition of the State of Alaska royalty crude oil an agreement by the purchaser, exchange partner or other recipient of the crude oil to include identical waiver provisions in all subsequent sales, exchanges or other disposition of the crude oil by that purchaser, exchange partner or other recipient and by any subsequent purchasers, exchange partners or other recipients.

26.7 Reasonableness of Approvals. Buyer and Seller agree

that as to any approvals or consents required of either of them under this Agreement, except for extensions of time periods under Article 10.2, such approvals or consents shall not be unreasonably withheld.

IN WITNESS WHEREOF, the Seller has caused this Agreement to be executed by its Commissioner of Natural Resources and the Buyer has caused this Agreement to be executed by its President, thereunto duly authorized by its Board of Directors in accordance with the certified seal, duly attested, to be affixed hereto, as of the day and year first above written.

THE STATE OF ALASKA

ATTEST:

Frederick H. Boness

By: Robert E. LeResche
Commissioner, Department of Natural Resources
"SELLER"

APPROVED AS TO FORM:

Attorney General

ALASKA PETROCHEMICAL COMPANY

ATTEST:

Willard Hanzlik

By: O. Charles Haning
President
"BUYER"

I, Willard Hanzlik, certify that I am the Secretary of the corporation named as Buyer in the above contract, that

O. Charles Honig was then President of said corporation; that said Agreement was duly signed for and in behalf of said corporation by authority of its governing body, and is within the scope of its corporate powers.

Willard Hanglik
Secretary

(CORPORATE SEAL)

THE STATE OF ALASKA )
) ss.
First JUDICIAL DISTRICT )

THIS IS TO CERTIFY that on this 22nd day of February, 1978, before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared Robert E. Lekosche, to me known to be the Commissioner of Natural Resources for the STATE OF ALASKA, and known to me to be the person who executed the within instrument on behalf of the STATE OF ALASKA, and acknowledged to me that the same was signed as a free act and deed of the STATE OF ALASKA for the purposes and uses therein stated.

WITNESS my hand and notarial seal the day and year last above written.

Lennie Boston
NOTARY PUBLIC in and ~~for~~ Alaska.
My commission expires: Nov. 2, 1980

THE STATE OF ALASKA )
) ss.
First JUDICIAL DISTRICT )

THIS IS TO CERTIFY that on the 2nd day of February, 1978, before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared the President of ALASKA PETROCHEMICAL COMPANY, an Alaska corporation, and known to me to be the person who executed the within instrument on behalf of the corporation herein named, and acknowledged to me that the same was signed as a free act and deed of said corporation for the uses and purposes therein stated and pursuant to its Bylaws or a resolution of its Board of Directors.

WITNESS my hand and notarial seal the day and year last above written.

Lennie Boston
NOTARY PUBLIC in and for Alaska.
My commission expires: Nov. 2, 1980



AGO 560176

CERTIFICATE

I, O. Charles Honig, President and a member of the Board of Directors of ALASKA PETROCHEMICAL COMPANY, an Alaska corporation, do hereby certify that the following is a true and correct copy of a resolution adopted by the Board of Directors of said ALASKA PETROCHEMICAL COMPANY at a special meeting duly called and held at Juneau, Alaska, on February 22, 1978:

> BE IT RESOLVED by the Board of Directors of Alaska Petrochemical Company that the Agreement for the Sale and Purchase of State Royalty Oil between Alaska Petrochemical Company and the Commissioner of Natural Resources of the State of Alaska presented to the Board at a special meeting duly called and held in Juneau, Alaska, on February 22, 1978, be and is hereby approved;
>
> BE IT FURTHER RESOLVED that the officers of the corporation be and hereby are authorized and directed to execute said Agreement for the Sale and Purchase of State Royalty Oil in the name of Alaska Petrochemical Company, and all further agreements and instruments that may be necessary or desirable to implement the purposes of that agreement.

O. Charles Honig
President

SUBSCRIBED and SWORN to before me this 22nd day of February, 1978.

Lonnie Boston
NOTARY PUBLIC in and for Alaska.
My commission expires: Nov. 2, 1980

AGO 560177

# EXHIBIT "A"

Attached to and Made a Part of the Agreement for the Sale and Purchase of State Royalty Oil dated February 22, 1978, between ALASKA PETROCHEMICAL COMPANY, an Alaska corporation "Buyer", and the COMMISSIONER OF NATURAL RESOURCES OF THE STATE OF ALASKA, acting pursuant to Alaska Statute 38.05.183, "Seller", With Respect to Certain Royalty Oil Owned and Taken In-Kind by Seller Under the Leases Described Herein Covering Lands in the State of Alaska.

| Tract No. | Description (Umiat Meridian, Alaska) | No. of Acres | ADL Serial No. | Basic Royalty | Lessee of Record | O.R.R. Interest | Working Interest Ownership |
|---|---|---|---|---|---|---|---|
| 1 | T12N-R11E, Secs. 9, 10 | 1,280 | 47445 | 1/8 | Mobil and Chevron | | Mobil—50%<br>Chevron—50% |
| 2 | T12N-R11E, Secs. 11, 12 | 1,280 | 28235 | 1/8 | A.R.Co. and Exxon | | A.R.Co.—50%<br>Exxon—50% |
| 3 | T12N-R12E, Sec. 7 | 580 | 28254 | 1/8 | A.R.Co. and Exxon | | A.R.Co.—50%<br>Exxon—50% |
| 4 | T12N-R15E, Sec. 23, 24 | 1,280 | 34625 | 1/8 | Sohio Petroleum Co. | * | Sohio—100% |
| 5 | T12N-R15E, Secs. 21, 22 | 1,280 | 34626 | 1/8 | A.R.Co. and Exxon | | A.R.Co.—50%<br>Exxon—50% |
| 6 | T12N-R15E, Secs. 19, 20 | 1,225 | 34627 | 1/8 | A.R.Co. and Exxon | | A.R.Co.—50%<br>Exxon—50% |
| 7 | T12N-R14E, Secs. 23, 24 | 1,280 | 34624 | 1/8 | A.R.Co. and Exxon | | A.R.Co.—50%<br>Exxon—50% |
| 8 | T12N-R14E, Sec. 22 | 640 | 28297 | 1/8 | A.R.Co. and Exxon | | A.R.Co.—50%<br>Exxon—50% |
| 9 | T12N-R13E, Sec. 19 | 585 | 47469 | 1/8 | Mobil and Phillips | | Mobil—50%<br>Phillips—50% |
| 10 | T12N-R12E, Secs. 23, 24 | 1,280 | 47448 | 1/8 | Mobil and Phillips | | Mobil—66⅔%<br>Phillips—33⅓% |
| 11 | T12N-R12E, Secs. 21, 22 | 1,280 | 28256 | 1/8 | A.R.Co. and Exxon | | A.R.Co.—50%<br>Exxon—50% |
| 12 | T12N-R12E, Secs. 17, 18, 19, 20 | 2,448 | 28255 | 1/8 | A.R.Co. and Exxon | | A.R.Co.—50%<br>Exxon—50% |
| 13 | T12N-R11E, Secs. 13, 14, 23, 24 | 2,560 | 28237 | 1/8 | A.R.Co. and Exxon | | A.R.Co.—50%<br>Exxon—50% |
| 14 | T12N-R11E, Secs. 15, 16, 21, 22 | 2,560 | 47447 | 1/8 | Mobil and Chevron | | Mobil—50%<br>Chevron—50% |
| 15 | T12N-R11E, Secs. 17, 18, 19, 20 | 2,448 | 47446 | 1/8 | Mobil and Chevron | | Mobil—50%<br>Chevron—50% |
| 16 | T12N-R10E, Secs. 13, 24 | 1,280 | 25637 | 1/8 | A.R.Co., BP Alaska, Sohio Petroleum Co. | | A.R.Co.—50%<br>BP Alaska—37½%<br>Sohio—12½% |
| 17 | T12N-R11E, Secs. 29, 30, 32 | 1,868 | 47449 | 1/8 | Mobil and Chevron | | Mobil—50%<br>Chevron—50% |
| 18 | T12N-R11E, Secs. 27, 28, 33, 34 | 2,560 | 28239 | 1/8 | A.R.Co. and Exxon | | A.R.Co.—50%<br>Exxon—50% |
| 19 | T12N-R11E, Secs. 25, 26, 35, 36 | 2,560 | 28238 | 1/8 | A.R.Co. and Exxon | | A.R.Co.—50%<br>Exxon—50% |
| 20 | T12N-R12E, Secs. 29, 30, 31, 32 | 2,459 | 28259 | 1/8 | A.R.Co. and Exxon | | A.R.Co.—50%<br>Exxon—50% |
| 21 | T12N-R12E, Secs. 27, 28, 33, 34 | 2,560 | 28258 | 1/8 | A.R.Co. and Exxon | | A.R.Co.—50%<br>Exxon—50% |
| 22 | T12N-R12E, Secs. 25, 35, N/2 and SE/4 Sec. 26 | 2,400 | 28257 | 1/8 | Mobil and Phillips | | Mobil—50%<br>Phillips—50% |

*See comment on page A-5.

| Tract No. | Description | No. of Acres | ADL Serial No. | Basic Royalty | Lessee of Record | O.R.R. Interest | Working Interest Ownership |
|---|---|---|---|---|---|---|---|
| | (Umiat Meridian, Alaska) | | | | | | |
| 22A | T12N-R12E, SW/4 Sec. 26 | 160 | 28257 | 1/8 | Mobil, Phillips, Chevron | | Mobil—33⅓%<br>Phillips—33⅓%<br>Chevron—33⅓% |
| 23 | T12N-R13E, Secs. 29, 30, 31, 32 | 2,459 | 28279 | 1/8 | Sohio Petroleum Co. | * | Sohio—100% |
| 24 | T12N-R13E, Secs. 27, 28, 33, 34 | 2,560 | 28278 | 1/8 | Sohio Petroleum Co. | * | Sohio—100% |
| 25 | T12N-R13E, Secs. 26, 35, 36 | 1,920 | 28277 | 1/8 | Sohio Petroleum Co. | * | Sohio—100% |
| 26 | T12N-R14E, Secs. 29, 31, 32 | 1,871 | 28299 | 1/8 | A.R.Co. and Exxon | | A.R.Co.—50%<br>Exxon—50% |
| 27 | T12N-R14E, Secs. 27, 28, 33, 34 | 2,560 | 28300 | 1/8 | A.R.Co. and Exxon | | A.R.Co.—50%<br>Exxon—50% |
| 28 | T12N-R14E, Secs. 25, 26, 35, 36 | 2,560 | 28301 | 1/8 | A.R.Co. and Exxon | | A.R.Co.—50%<br>Exxon—50% |
| 29 | T12N-R15E, Secs. 29, 30, 31, 32 | 2,459 | 34628 | 1/8 | A.R.Co. and Exxon | | A.R.Co.—50%<br>Exxon—50% |
| 30 | T12N-R15E, Secs. 27, 28, 33, 34 | 2,560 | 34629 | 1/8 | A.R.Co. and Exxon | | A.R.Co.—50%<br>Exxon—50% |
| 31 | T12N-R15E, Secs. 25, 26, 35, 36 | 2,560 | 34630 | 1/8 | Sohio Petroleum Co. | * | Sohio—100% |
| 32 | T12N-R16E, Secs. 29, 30, 31, 32 | 2,459 | 34635 | 1/8 | Sohio Petroleum Co. | * | Sohio—100% |
| 33 | T12N-R16E, Secs. 27, 28, 33, 34 | 2,560 | 34634 | 1/8 | Sohio Petroleum Co. | * | Sohio—100% |
| 34 | T12N-R16E, Secs. 25, 26, 35, 36 | 2,560 | 34633 | 1/8 | Sohio Petroleum Co. | * | Sohio—100% |
| 35 | T11N-R16E, Secs. 1, 2, 11, 12 | 2,560 | 34636 | 1/8 | Sohio Petroleum Co. | * | Sohio—100% |
| 36 | T11N-R16E, Secs. 3, 4, 9, 10 | 2,560 | 28337 | 1/8 | Sohio Petroleum Co. | * | Sohio—100% |
| 37 | T11N-R16E, Secs. 5, 6, 7, 8 | 2,469 | 28338 | 1/8 | Sohio Petroleum Co. | * | Sohio—100% |
| 38 | T11N-R15E, Secs. 1, 2, 11, 12 | 2,560 | 28320 | 1/8 | Sohio Petroleum Co. | * | Sohio—100% |
| 39 | T11N-R15E, Secs. 3, 4, 9, 10 | 2,560 | 34631 | 1/8 | A.R.Co. and Exxon | | A.R.Co.—50%<br>Exxon—50% |
| 40 | T11N-R15E, Secs. 5, 6, 7, 8 | 2,469 | 34632 | 1/8 | A.R.Co. and Exxon | | A.R.Co.—50%<br>Exxon—50% |
| 41 | T11N-R14E, Secs. 1, 2, 11, 12 | 2,560 | 28302 | 1/8 | A.R.Co. and Exxon | | A.R.Co.—50%<br>Exxon—50% |
| **42 | T11N-R14E, Secs. 3, 4, 9, 10 | 2,560 | 28303 | 1/8 | A.R.Co. and Exxon | | A.R.Co.—50%<br>Exxon—50% |
| 43 | T11N-R14E, Secs. 5, 6, 7, 8 | 2,469 | 28304 | 1/8 | A.R.Co. and Exxon | | A.R.Co.—50%<br>Exxon—50% |
| 44 | T11N-R13E, Secs. 1, 2, 11, 12 | 2,560 | 28290 | 1/8 | Sohio Petroleum Co. | * | Sohio—100% |
| 45 | T11N-R13E, Secs. 3, 4, 9, 10 | 2,560 | 28291 | 1/8 | Sohio Petroleum Co. | * | Sohio—100% |
| 46 | T11N-R13E, Secs. 5, 6, 7, 8 | 2,469 | 28282 | 1/8 | Sohio Petroleum Co. | * | Sohio—100% |
| 47 | T11N-R12E, Secs. 1, 2, 11, 12 | 2,560 | 28260 | 1/8 | Sohio Petroleum Co. | * | Sohio—100% |
| 48 | T11N-R12E, Secs. 3, 4, 9, 10 | 2,560 | 28261 | 1/8 | Mobil and Phillips | | Mobil—50%<br>Phillips—50% |
| 49 | T11N-R12E, Secs. 5, 6, 7, 8 | 2,469 | 47450 | 1/8 | Mobil, Phillips, Chevron | | Mobil—33⅓%<br>Phillips—33⅓%<br>Chevron—33⅓% |
| 50 | T11N-R11E, Secs. 1, 2, 11, 12 | 2,560 | 28240 | 1/8 | A.R.Co. and Exxon | | A.R.Co.—50%<br>Exxon—50% |
| 51 | T11N-R11E, Secs. 4, 9, 10, N/2 and SW/4 Sec. 3 | 2,400 | 28241 | 1/8 | Mobil and Phillips | | Mobil—50%<br>Phillips—50% |
| 51A | T11N-R11E, SE/4 Sec. 3 | 160 | 28241 | 1/8 | Mobil, Phillips, Chevron | | Mobil—33⅓%<br>Phillips—33⅓%<br>Chevron—33⅓% |

*See comment on page A-5.

**ADL 28303 has been certified as a discovery royalty lease. Basic royalty is 12-1/2% of production, but may be reduced to 5% for a period not to exceed ten (10) years.

| Tract No. | Description | No. of Acres | ADL Serial No. | Basic Royalty | Lessee of Record | O.R.R. Interest | Working Interest Ownership |
|---|---|---|---|---|---|---|---|
| | (Umiat Meridian, Alaska) | | | | | | |
| 52 | T11N-R11E, Sec. 15 | 640 | 28244 | 1/8 | A.R.Co. and Exxon | | A.R.Co.—50%<br>Exxon—50% |
| 53 | T11N-R11E, Secs. 13, 14, 24 | 1,920 | 28245 | 1/8 | A.R.Co. and Exxon | | A.R.Co.—50%<br>Exxon—50% |
| 54 | T11N-R12E, Secs. 17, 18, 19 | 1,840 | 28262 | 1/8 | Chevron | | Chevron—100% |
| 54A | T11N-R12E, Sec. 20 | 640 | 28262 | 1/8 | Chevron, Mobil, Phillips | | Chevron—33⅓%<br>Mobil—33⅓%<br>Phillips—33⅓% |
| 55 | T11N-R12E, Secs. 15, 16 | 1,280 | 28263 | 1/8 | Mobil and Phillips | | Mobil—50%<br>Phillips—50% |
| 55A | T11N-R12E, Secs. 21, 22 | 1,280 | 28263 | 1/8 | Mobil, Phillips, Chevron | | Mobil—33⅓%<br>Phillips—33⅓%<br>Chevron—33⅓% |
| 56 | T11N-R12E, Secs. 13, 14, 23, 24 | 2,560 | 47431 | 1/8 | Mobil, Phillips, Chevron | | Mobil—33⅓%<br>Phillips—33⅓%<br>Chevron—33⅓% |
| 57 | T11N-R13E, Secs. 17, 18, 19, 20 | 2,480 | 28283 | 1/8 | Sohio Petroleum Co. | * | Sohio—100% |
| 58 | T11N-R13E, Secs. 15, 16, 21, 22 | 2,560 | 28284 | 1/8 | Sohio Petroleum Co. | * | Sohio—100% |
| 59 | T11N-R13E, Secs. 13, 14, 23, 24 | 2,560 | 28285 | 1/8 | Sohio Petroleum Co. | * | Sohio—100% |
| 60 | T11N-R14E, Secs. 17, 18, 19, 20 | 2,480 | 28305 | 1/8 | Sohio Petroleum Co. | * | Sohio—100% |
| 61 | T11N-R14E, Secs. 15, 16, 21, 22 | 2,560 | 28306 | 1/8 | A.R.Co. and Exxon | | A.R.Co.—50%<br>Exxon—50% |
| 62 | T11N-R14E, Secs. 13, 14, 23, 24 | 2,560 | 28307 | 1/8 | A.R.Co. and Exxon | | A.R.Co.—50%<br>Exxon—50% |
| 63 | T11N-R15E, Secs. 17, 18, 19, 20 | 2,480 | 28321 | 1/8 | A.R.Co. and Exxon | | A.R.Co.—50%<br>Exxon—50% |
| 64 | T11N-R15E, Secs. 15, 16, 21, 22 | 2,560 | 28322 | 1/8 | A.R.Co. and Exxon | | A.R.Co.—50%<br>Exxon—50% |
| 65 | T11N-R15E, Secs. 13, 14, 23, 24 | 2,560 | 28323 | 1/8 | A.R.Co. and Exxon | | A.R.Co.—50%<br>Exxon—50% |
| 66 | T11N-R16E, Secs. 17, 18, 19 | 1,840 | 28339 | 1/8 | Sohio Petroleum Co. | * | Sohio—100% |
| 67 | T11N-R16E, Secs. 15, 16 | 1,280 | 28340 | 1/8 | Sohio Petroleum Co. | * | Sohio—100% |
| 68 | T11N-R16E, Secs. 13, 14 | 1,280 | 28341 | 1/8 | Sohio Petroleum Co. | * | Sohio—100% |
| 69 | T11N-R16E, Secs. 30, 31, 32 | 1,851 | 28343 | 1/8 | Sohio Petroleum Co. | * | Sohio—100% |
| 70 | T11N-R15E, Secs. 25, 26, 35, 36 | 2,560 | 28324 | 1/8 | A.R.Co. and Exxon | | A.R.Co.—50%<br>Exxon—50% |
| 71 | T11N-R15E, Secs. 27, 28, 33, 34 | 2,560 | 28325 | 1/8 | A.R.Co. and Exxon | | A.R.Co.—50%<br>Exxon—50% |
| 72 | T11N-R15E, Secs. 29, 30, 31, 32 | 2,491 | 28326 | 1/8 | A.R.Co. and Exxon | | A.R.Co.—50%<br>Exxon—50% |
| 73 | T11N-R14E, Secs. 25, 26, 35, 36 | 2,560 | 28308 | 1/8 | A.R.Co. and Exxon | | A.R.Co.—50%<br>Exxon—50% |
| 74 | T11N-R14E, Secs. 27, 28, 33, 34 | 2,560 | 28309 | 1/8 | Sohio Petroleum Co. | * | Sohio—100% |
| 75 | T11N-R14E, Secs. 29, 30, 31, 32 | 2,491 | 28310 | 1/8 | Sohio Petroleum Co. | * | Sohio—100% |
| 76 | T11N-R13E, Secs. 25, 26, 35, 36 | 2,560 | 28286 | 1/8 | Sohio Petroleum Co. | * | Sohio—100% |
| 77 | T11N-R13E, Secs. 27, 28, 33, 34 | 2,560 | 28287 | 1/8 | Sohio Petroleum Co. | * | Sohio—100% |
| 78 | T11N-R13E, Secs. 29, 30, 31, 32 | 2,491 | 28288 | 1/8 | Mobil and Phillips | | Mobil—50%<br>Phillips—50% |
| 79 | T11N-R12E, Secs. 25, 26, 35, 36 | 2,560 | 28264 | 1/8 | A.R.Co. and Exxon | | A.R.Co.—50%<br>Exxon—50% |

*See comment on page A-3.

| Tract No. | Description | No. of Acres | ADL Serial No. | Basic Royalty | Lessee of Record | O.R.R. Interest | Working Interest Ownership |
|---|---|---|---|---|---|---|---|
| | (Umiat Meridian, Alaska) | | | | | | |
| 80 | T11N-R12E, Secs. 27, 28, 33, 34 | 2,560 | 47452 | 1/8 | Mobil, Phillips, Chevron | | Mobil—33⅓%<br>Phillips—33⅓%<br>Chevron—33⅓% |
| 81 | T11N-R12E, Secs. 29, 30, 31, 32 | 2,491 | 47453 | 1/8 | Mobil, Phillips, Chevron | | Mobil—33⅓%<br>Phillips—33⅓%<br>Chevron—33⅓% |
| 82 | T11N-R11E, Sec. 25 | 640 | 28246 | 1/8 | A.R.Co. and Exxon | | A.R.Co.—50%<br>Exxon—50% |
| 83 | T10N-R12E, Secs. 3, 4, 10 | 1,920 | 47454 | 1/8 | Mobil, Phillips, Chevron | | Mobil—33⅓%<br>Phillips—33⅓%<br>Chevron—33⅓% |
| 84 | T10N-R12E, Secs. 1, 2, 11, 12 | 2,560 | 28265 | 1/8 | A.R.Co. and Exxon | | A.R.Co.—50%<br>Exxon—50% |
| 85 | T10N-R13E, Secs. 6, 7, 8, S/2 and NE/4 Sec. 5 | 2,361 | 28269 | 1/8 | Mobil and Phillips | | Mobil—50%<br>Phillips—50% |
| 85A | T10N-R13E, NW/4 Sec. 5 | 160 | 28289 | 1/8 | Mobil, Phillips, Chevron | | Mobil—33⅓%<br>Phillips—33⅓%<br>Chevron—33⅓% |
| 86 | T10N-R13E, Secs. 3, 4, 9, 10 | 2,560 | 47471 | 1/8 | Amerada Hess, et. al. | | Amerada Hess—27%<br>Getty—30.5%<br>LL&E—13.23%<br>Placid—9.125%<br>N. B. Hunt—6.3625%<br>Hunt Ind.—3.8625%<br>Caroline Hunt Tr.—3.3%<br>Wm. Herbert Hunt Tr.—3.3%<br>Lamar Hunt Tr. Est.—3.3% |
| 87 | T10N-R13E, Secs. 1, 2, 11, 12 | 2,560 | 47472 | 1/8 | Amerada Hess and Getty | | Amerada Hess—50%<br>Getty—50% |
| 88 | T10N-R14E, Secs. 5, 6, 7, 8 | 2,501 | 28313 | 1/8 | A.R.Co. and Exxon | | A.R.Co.—50%<br>Exxon—50% |
| 89 | T10N-R14E, Secs. 3, 4, 9, 10 | 2,560 | 28312 | 1/8 | Sohio Petroleum Co. | * | Sohio—100% |
| 90 | T10N-R14E, Secs. 1, 2, 11, 12 | 2,560 | 28311 | 1/8 | Sohio Petroleum Co. | * | Sohio—100% |
| 91 | T10N-R15E, Secs. 5, 6, 7, 8 | 2,501 | 28329 | 1/8 | A.R.Co. and Exxon | | A.R.Co.—50%<br>Exxon—50% |
| 92 | T10N-R15E, Secs. 3, 4, 9, 10 | 2,560 | 28328 | 1/8 | A.R.Co. and Exxon | | A.R.Co.—50%<br>Exxon—50% |
| 93 | T10N-R15E, Secs. 1, 2, 11, 12 | 2,560 | 28327 | 1/8 | A.R.Co. and Exxon | | A.R.Co.—50%<br>Exxon—50% |
| 94 | T10N-R16E, Secs. 5, 6, 7, 8 | 2,501 | 28345 | 1/8 | A.R.Co. and Exxon | | A.R.Co.—50%<br>Exxon—50% |
| 95 | T10N-R16E, Secs. 4, 9 | 1,280 | 28344 | 1/8 | A.R.Co. and Exxon | | A.R.Co.—50%<br>Exxon—50% |
| 96 | T10N-R16E, Sec. 16 | 640 | 28347 | 1/8 | A.R.Co. and Exxon | | A.R.Co.—50%<br>Exxon—50% |

*See comment on page A-5.



AGO 560181

| Tract No. | Description | No. of Acres | ADL Serial No. | Basic Royalty | Lessee of Record | O.R.R. Interest | Working Interest Ownership |
|---|---|---|---|---|---|---|---|
| | (Umiat Meridian, Alaska) | | | | | | |
| 97 | T10N-R16E, Secs. 17, 18, 19, 20 | 2,512 | 28346 | 1/8 | A.R.Co. and Exxon | | A.R.Co.—50%<br>Exxon—50% |
| 98 | T10N-R15E, Secs. 13, 14, 23, 24 | 2,560 | 28332 | 1/8 | A.R.Co. and Exxon | | A.R.Co.—50%<br>Exxon—50% |
| 99 | T10N-R15E, Secs. 15, 16, 21, 22 | 2,560 | 28331 | 1/8 | Sohio Petroleum Co. | * | Sohio—100% |
| 100 | T10N-R15E, Secs. 17, 18, 19, 20 | 2,512 | 28330 | 1/8 | Sohio Petroleum Co. | * | Sohio—100% |
| 101 | T10N-R14E, Secs. 13, 14, 23, 24 | 2,560 | 28315 | 1/8 | Sohio Petroleum Co. | * | Sohio—100% |
| 102 | T10N-R14E, Secs. 15, 16, 21, 22 | 2,560 | 28314 | 1/8 | Mobil and Phillips | | Mobil—50%<br>Phillips—50% |
| 103 | T10N-R14E, Secs. 17, 18, 19, 20 | 2,512 | 47475 | 1/8 | Amerada Hess, et. al. | | Amerada Hess—25%<br>Getty—25%<br>Marathon—25%<br>Placid—7.5%<br>N. B. Hunt—5%<br>Hunt Ind.—3.125%<br>Caroline Hunt Tr.—3.125%<br>Wm. Herbert Hunt Tr.—3.125%<br>Lamar Hunt Tr. Est.—3.125% |
| 104 | T10N-R13E, Secs. 13, 14, 24 | 1,920 | 47476 | 1/8 | A.R.Co. and Exxon | | A.R.Co.—50%<br>Exxon—50% |
| 105 | T10N-R13E, Secs. 15, 16 | 1,280 | 28290 | 1/8 | Mobil and Phillips | | Mobil—50%<br>Phillips—50% |
| 106 | T10N-R14E, Secs. 27, 28 | 1,280 | 47482** | 1/8 | A.R.Co. and Exxon | | A.R.Co.—50%<br>Exxon—50% |
| 107 | T10N-R14E, Secs. 26, 36 | 1,280 | 28316 | 1/8 | Chevron | | Chevron—100% |
| 107A | T10N-R14E, Sec. 25 | 640 | 28316 | 1/8 | Chevron, Mobil, Phillips | | Chevron—33⅓%<br>Mobil—33⅓%<br>Phillips—33⅓% |
| 108 | T10N-R15E, Secs. 29, 30, 31, 32 | 2,523 | 28335 | 1/8 | Sohio Petroleum Co. | * | Sohio—100% |
| 109 | T10N-R15E, Secs. 33, 34 | 1,280 | 28334 | 1/8 | Mobil and Phillips | | Mobil—50%<br>Phillips—50% |
| 109A | T10N-R15E, Secs. 27, 28 | 1,280 | 28334 | 1/8 | Mobil, Phillips, Chevron | | Mobil—33⅓%<br>Phillips—33⅓%<br>Chevron—33⅓% |
| 110 | T10N-R15E, Secs. 25, 26, 35, 36 | 2,560 | 28333 | 1/8 | Sohio Petroleum Co. | * | Sohio—100% |
| 111 | T10N-R16E, Secs. 29, 30, 31 | 1,883 | 28349 | 1/8 | Sohio Petroleum Co. | * | Sohio—100% |
| | | 245,767 | | | | | |

*BP Alaska, Inc. owns an overriding royalty interest equal to 75% of all net profits from production between certain levels of oil production.

**This Tract Number 106 was assigned to A.R.Co. and Exxon. Upon approval of the assignment by the Director a new ADL Serial No. will be given to this Tract.

EXHIBIT "B"

Calculation of monthly in value royalty under the Leases and leases (all calculations shall be rounded to the nearest $0.001)

STEP 1: Calculate each producer's weighted average value per barrel at Point of Delivery for all oil sold by each producer during the month, as follows:

Example, Producer Y

| (1) Destination | (2) Volume Sold | (3) Sales Price at Destination | (4) Shipping Costs | (5) Pipeline Tariff | (6) Point of Delivery Value | (7) Weighted Average Value |
|---|---|---|---|---|---|---|
| 1 | 2,000,000 | $12.500 | $ -0- | $4.770 | $7.730 | - |
| 2 | 4,000,000 | 13.370 | 1.110 | 4.750 | 7.510 | - |
| 3 | 5,000,000 | 13.440 | 3.830 | 4.750 | 4.860 | - |
| | | | | | | $6.345 |

Columns 2, 3, 4 and 5 shall be computed from actual data as reported by each producer and filed with the State of Alaska for royalty purposes ,as cross-checked against severance tax filings.

STEP 2: The "weighted average value" per barrel of each producer (column 7 above) at the Point of Delivery shall then be used in column (9) below in calculating the applicable in value price for each producer (column 11 below), the weighted average of which shall be the In Value Price to Buyer (column 12), as follows:



AGO 560183

Example, all producers:

| (8) Producer and Quantity | (9) Wtd. Avg. Value at Point of Delivery (Col. 7) | (10) Wtd. Avg. Price Received by all other Producers | (11) Applicable Price for In Value Calculation | (12) In Value Price to Buyer |
|---|---|---|---|---|
| X; 4,200,000 | $6.920 | $6.404 | $6.920 | - |
| Y; 11,000,000 | 6.345 | 7.003 | 7.003 | - |
| Z; 500,000 | 7.700 | 6.504 | 7.700 | - |
| Weighted Avg. | $6.542 | | | $7.003 |

Notes:

1) Values in column 10 are the weighted average of all producers other than the producer for which the calculation is being made.

2) Column 11 is the highest of the values in columns 9 or 10 for each producer.

3) Column 12 is the weighted average of values in column 11.

4) Buyer shall not pay any reimbursable costs under Article 8.2 until such costs are judicially determined as owing.

5) There is no posted price. "Market" or "field" value shall not be used in calculating the "In Value price to Buyer" unless and until the methodology of determining same is judicially decided.

6) Subject to later adjustment under Article 9.5.



AGO 560184

EXHIBIT "C"

FORM OF BOND

The bond shall be in a form submitted by Buyer and shall contain such terms and conditions as are approved by the Commissioner.



AGO 560185

EXHIBIT "D"

SUPPLEMENTAL ENVIRONMENTAL STANDARDS

VESSEL SAFETY AND MANEUVERABILITY FEATURES

1. Buyer agrees that all tank vessels of 1,600 gross tons or more which it owns and operates directly or through an Affiliate in marine transportation of petroleum, while navigating the coastal waters of the state, shall be equipped with the following:

(a) LORAN-C navigational equipment, or better;

(b) two marine radar systems, meeting either U. S. Marine Administration Standards for Merchant Ship Construction (COM-72-11469, Dec. 1972), or Radio Technical Commission for Marine Services performance specifications for a general purpose navigational set for ocean going ships of 1,600 tons gross tonnage and upwards (RTCM-Paper 106-75/EC-167/SC65-191 BRWG-45, or, RTCM-Paper 104-74/ED-140 BRWG 42), one of which must always be in operation, or better;

(c) those tank vessels of 20,000 DWT and over shall have at least one of the radars fitted with a collision avoidance system meeting either U. S. Maritime Administration Standards for Merchant Ship Construction (COM-72-11469, Dec. 1972), or the Radio Technical Commission for Marine Services performance specifications for a computer aided collision avoidance system for merchant ships (RTCM-Paper 171-76/EC-205/SC65-226), or better.



AGO 560186

2. Except for vessels equipped with lateral thrust equipment and astern horsepower equal to forty percent (40%) of rated horsepower, tank vessels of 20,000 DWT or more owned and operated by Buyer directly or through an Affiliate shall be escorted by tugs having an aggregate shaft horsepower equivalent to five percent of the deadweight tonnage of the escorted vessel when navigating between the Alyeska Terminal at Port Valdez and Bligh Reef, when docking at the Alyeska Terminal, and, after the Petrochemical Facility is operational, at the port facility serving the Petrochemical Facility.

BALLAST WATER TREATMENT

3. With respect to tank vessels owned and operated by Buyer directly or through an Affiliate which carry petroleum, Buyer agrees that no ballast which has been placed in cargo tanks or tank cleaning waste-water will be discharged into the waters of the state. All oily water (including, but not limited to, discharges from fuel tanks, cargo tanks, ballast tanks, slop tanks and bilges, which contain oil, grease, refined petroleum products or their by-products, including petrochemicals) discharged from any tank vessel owned and operated by Buyer directly or through an Affiliate in the State of Alaska shall be received and treated by a waste-water treatment facility meeting the effluent limitations specified in the next paragraph.



AGO 560187

4. Buyer will maintain and operate a waste-water treatment facility for the reception and treatment of ballast carried in cargo tanks and tank cleaning waste-water at or near the place where the petroleum will be transferred from the Petrochemical Facility to vessels for marine transport. Water discharged from said treatment facility shall not contain more than 10 parts of oil, grease, refined petroleum products or their by-products, including petrochemicals, per million parts of water, on a weekly (7 day) average. Buyer will consult with the Department of Fish and Game and Environmental Conservation in connection with designing and constructing said waste-water treatment facility in order that the effect of the effluent discharged from the facility on the receiving environment and the fisheries in that environment will be minimized.

PROOF OF FINANCIAL RESPONSIBILITY

5. Buyer will obtain and maintain or cause to be obtained and maintained insurance in the face amount of $20,000,000 or a corporate indemnity or guarantee of performance in an equivalent amount by a corporation or entity acceptable to the Commissioner, for each and every tank vessel owned and operated by it directly or through an Affiliate that calls at Alaskan ports and carries petroleum to compensate third parties for damages resulting from the unlawful discharge of petroleum within or affecting land or

water within the territorial jurisdiction of the State of Alaska. Buyer will also obtain and maintain insurance for each and every oil terminal facility it owns, operates or controls in Alaska, in the face amount of $100,000 for each facility with a tank capacity of less than 200,000 barrels of petroleum, and in the face amount of $1,000,000 for each facility with a tank capacity of 200,000 barrels or more of petroleum, to compensate third parties for damages resulting from the unlawful discharge of petroleum within or affecting land or water within the jurisdiction of the State of Alaska while said petroleum is being transferred. In the event any other insurance is required by applicable federal or state law to cover the same risks described in this paragraph, the face amount of any such other insurance shall be considered as a part and in reduction of the face amount of insurance required by this paragraph. The insurance shall be issued by an insurer which is either authorized to sell insurance in the State of Alaska by the Department of Commerce and Economic Development, Division of Insurance, or is an authorized insurer listed by the Division as not disapproved for use in the State of Alaska. The deductible provision in any policy of insurance, binder or certificate shall be unacceptable if it exceeds five percent (5%) of the face amount unless the Buyer demonstrates acceptable supplemental coverage or credit worthiness. The terms of the insurance shall provide that termination or cancellation of the insurance, including expiration by its terms, insofar as it relates to the insured's liability arising from a discharge of

oil within or affecting the land and water within the territorial jurisdiction of the State of Alaska, will not be effective until thirty days after notice in writing has been posted (prepaid and certified) by the insurer to the insured and to the Alaska Department of Environmental Conservation at its office in Juneau, Alaska. Buyer will annually provide the Department of Environmental Conservation (or its successor in responsibility) evidence of said insurance for the respective vessels and facilities and its coverage of said damages during the month of January.

PETROLEUM SPILL CLEANUP AND CONTINGENCY PLANS

6. Buyer shall be responsible for the detection, location, confinement and cleanup of petroleum discharges at the Petrochemical Facility. At least 180 days prior to scheduled start-up of the Petrochemical Facility, Buyer shall submit its contingency plans to the Department of Environmental Conservation for review as being in compliance with applicable law and regulation. The plans shall provide for immediate corrective action in the event of petroleum discharges, including confinement and cleanup. The plans shall include separate and specific techniques and schedules for cleanup of petroleum discharges on land and sea and in lakes, rivers, streams and estuaries, to the extent such water resources are in proximity to the Petrochemical Facility.



AGO 560190

DEFINITIONS

7. In this exhibit,

(a) "discharge" means any spilling, leaking, pumping, pouring, emitting, emptying or dumping;

(b) "DWT" or "deadweight tons" means the difference in metric tons between the lightweight displacement and the total displacement of a vessel measured in water of specific gravity 1.025 at the load waterline corresponding to the assigned summer freeboard;

(c) "oil terminal facility" means an onshore or offshore facility of any kind and related appurtenances, including but not limited to a deepwater port, located in, on, or under the surface of any land or water of the state, including title and submerged land, which is used or capable of being used for the purpose of transferring, processing or refining, or storing petroleum as it is defined in this section;

(d) "petroleum" means all crude oil purchased under this Agreement, and all refined petroleum products and petroleum by-products, including petrochemicals, produced at the Petrochemical Facility from such petroleum;

(e) "tank vessel" means a self-propelled vessel that is specially constructed or converted to carry bulk cargo in tanks and includes tankers, tankships and combination carriers;

(f) "transferred" includes both onloading and offloading between terminal and vessel; and



AGO 560191

(g) "waters of the state" means the navigable waters within the territorial limits of the State of Alaska, and the marginal sea adjacent to the State of Alaska, as defined in AS 44.03 and AS 46.03.900(22) or any successor provisions.

AMENDMENT

Dated May 17, 1978

to the

AGREEMENT FOR THE SALE AND

PURCHASE OF STATE ROYALTY OIL

THIS AMENDMENT entered into as of the 17th day of May, 1978, by and between THE STATE OF ALASKA, hereinafter called the "Seller," acting by and through its Commissioner of Natural Resources, and ALASKA PETROCHEMICAL COMPANY, an Alaska corporation, hereinafter called the "Buyer," and being the Amendment to the Agreement between Seller and Buyer entered into February 22, 1978.

WITNESSETH:

WHEREAS, an Agreement for the Sale and Purchase of State Royalty Oil was duly executed on February 22, 1978, between the State of Alaska, as Seller, and Alaska Petrochemical Company, as Buyer ("Agreement"); and

WHEREAS, the Agreement may be amended under Article XXII thereof; and

WHEREAS, Seller and Buyer desire to clarify certain intentions of the Buyer and Seller therein;

NOW THEREFORE, in consideration of the representations, covenants and conditions herein contained, Seller and Buyer hereby amend the Agreement as follows:

1. Article 1.13 is hereby amended by adding the following sentence at the end of Article 1.13:

"Total Project Costs shall not include any amounts paid for the purchase of crude oil."

2. Article I is hereby further amended by the addition of Article 1.14 which reads as follows:

"1.14 The terms "committed to be expended" as used in Article 1.13 and "commit to expend" as used in Article 10.2 shall mean contractually binding agreements, contracts and purchase orders."

3. Article 2.2 is hereby amended by the addition of a sentence at the end of such Article 2.2 as follows:

"Notwithstanding any other provision of this Article 2.2 Buyer shall not be entitled to receive delivery of any royalty crude oil hereunder until (a) Buyer has actually expended at least $100 million in Total Project Costs, and (b) at least twenty-five (25) months have passed since the Effective Date."

4. Article II is further amended by the addition of a new Article 2.7, to read as follows:

"2.7 Reduction of Quantity of Oil Deliverable to Buyer. Notwithstanding any provision of Article II requiring Seller to deliver to Buyer quantities of crude oil up to 150,000 barrels per day, in the event six years after the Effective Date the

capacity of the Petrochemical Facility is less than 150,000 barrels per day, the maximum quantities deliverable by Seller for the remaining term of this Agreement shall be reduced to that quantity equal to the capacity of the Petrochemical Facility at such time. Coincident with such reduction, the figure "145,000 barrels" appearing several places in Article 2.4 shall be reduced by a like amount. For the purposes of determining capacity under this Article 2.7, the capacity of the Petrochemical Facility shall not be diminished or reduced because of temporary reductions due to market conditions or shutdowns in the Petrochemical Facility, regardless of cause."

5. The first sentence of Article 4.2.1 is hereby amended and revised to read as follows:

"4.2.1 Construction Obligations. In consideration of the obligations assumed by each party herein, Buyer will proceed with reasonable diligence to design, construct, start up and thereafter initiate operation of a petrochemical manufacturing and fuels refining facility in the State of Alaska with capacity to process at least 150,000 barrels of crude oil per day."

IN WITNESS WHEREOF, the Seller has caused this Agreement to be executed by its Commissioner of Natural Resources and the Buyer has caused this Agreement to be executed by its

Chairman of the Board, thereunto duly authorized by its Board of Directors in accordance with the certified seal, duly attested, to be affixed hereto, as of the day and year first above written.

THE STATE OF ALASKA

ATTEST:

BY:
Commissioner, Department of Natural Resources
"SELLER"

APPROVED AS TO FORM:

ALASKA PETROCHEMICAL COMPANY

ATTEST:

BY:
Chairman of the Board
"BUYER"

AGO 560196

# STATE OF ALASKA

THE LEGISLATURE

1978

Source :: SCSHCR 112

Legislative Resolve No. 42

Approving the sale of royalty oil to Alaska Petrochemical Company.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

WHEREAS the State of Alaska has the right under AS 38.05.-180 and its oil and gas leases to take its royalty of crude oil production removed or sold from these leases either in value (money) or in kind (oil); and

WHEREAS the legislature has, by enactment of AS 38.06 and AS 38.05.182, established a policy favoring the taking of that royalty in kind (referred to as "royalty oil"); and

WHEREAS, under his statutory authority as set out in AS 38.05 and 38.06, the commissioner of natural resources has negotiated an agreement entitled "AGREEMENT FOR THE SALE AND PURCHASE OF STATE ROYALTY OIL" ("Agreement") for the sale and purchase of royalty oil with Alaska Petrochemical Company; and

WHEREAS, under its duties and powers as set out in AS 38.06, the Alaska Royalty Oil and Gas Development Advisory Board has considered and, on February 22, 1978, approved the Agreement; and

WHEREAS the commissioner of natural resources has fulfilled the statutory prerequisites necessary to selling the royalty oil which is the subject of the Agreement and has obtained approvals from the Alaska Royalty Oil and Gas Development Advisory Board, to the extent required under AS 38.05 and 38.06; and

WHEREAS the Agreement contains a provision stating that it takes effect on the date on which it has been approved by a concurrent resolution of a majority of each house of the Tenth Alaska State Legislature; and

WHEREAS, under AS 38.06.055(a), no sale of royalty oil may be made by the commissioner of natural resources without the prior approval of the legislature by a concurrent resolution concurred in by a majority of the members of each house; and

WHEREAS the commissioner of natural resources submitted the Agreement to the legislature for consideration and approval; and

WHEREAS the legislature has reviewed and evaluated the Agreement, and has conducted public hearings and otherwise received background information, expert advice, and expressions of public opinion sufficient to make a reasoned determination with respect to the Agreement; and

WHEREAS the commissioner of natural resources and Alaska Petrochemical Company have negotiated certain amendments to the Agreement, dated May 17, 1978; and

WHEREAS the Royalty Oil and Gas Development Advisory Board has considered and, on May 19, 1978, approved those amendments; and

WHEREAS the legislature finds the Agreement, as amended, to be in the best interest of the State of Alaska and its citizens, and further finds that the Agreement, as amended, is in compliance with all applicable constitutional directives and requirements of law;

BE IT RESOLVED by the Alaska State Legislature that the agreement entitled "AGREEMENT FOR THE SALE AND PURCHASE OF STATE ROYALTY OIL," as amended, between the State of Alaska, acting through its commissioner of natural resources, and Alaska Petrochemical Company, is hereby approved.



AGO 560198

# Authentication

The following officers of the Legislature certify that the attached enrolled resolution, SENATE CS FOR HOUSE CONCURRENT RESOLUTION NO. 112, was passed in conformity with the requirements of the constitution and laws of the State of Alaska and the Uniform Rules of the Legislature.

Passed by the House June 18, 1978

Speaker of the House

ATTEST:

Chief Clerk of the House

Passed by the Senate June 13, 1978

President of the Senate

ATTEST:

Secretary of the Senate

AGO 560199

AGO 560200

Research Office Copy

AMENDMENT

Dated May 17, 1978

to the

AGREEMENT FOR THE SALE AND PURCHASE OF STATE ROYALTY OIL

Legislative Reference Library
Legislative Affairs Agency
State Capital
Pouch Y
Juneau, AK 99811

THIS AMENDMENT entered into as of the 17th day of May, 1978, by and between THE STATE OF ALASKA, hereinafter called the "Seller," acting by and through its Commissioner of Natural Resources, and ALASKA PETROCHEMICAL COMPANY, an Alaska corporation, hereinafter called the "Buyer," and being the Amendment to the Agreement between Seller and Buyer entered into February 22, 1978.

WITNESSETH:

WHEREAS, an Agreement for the Sale and Purchase of State Royalty Oil was duly executed on February 22, 1978, between the State of Alaska, as Seller, and Alaska Petrochemical Company, as Buyer ("Agreement"); and

WHEREAS, the Agreement may be amended under Article XXII thereof; and

WHEREAS, Seller and Buyer desire to clarify certain intentions of the Buyer and Seller therein;

NOW THEREFORE, in consideration of the representations, covenants and conditions herein contained, Seller and Buyer hereby amend the Agreement as follows:

1. Article 1.13 is hereby amended by adding the following sentence at the end of Article 1.13:

"Total Project Costs shall not include any amounts paid for the purchase of crude oil."

2. Article I is hereby further amended by the addition of Article 1.14 which reads as follows:

"1.14 The terms "committed to be expended" as used in Article 1.13 and "commit to expend" as used in Article 10.2 shall mean contractually binding agreements, contracts and purchase orders."

3. Article 2.2 is hereby amended by the addition of a sentence at the end of such Article 2.2 as follows:

"Notwithstanding any other provision of this Article 2.2 Buyer shall not be entitled to receive delivery of any royalty crude oil hereunder until (a) Buyer has actually expended at least $100 million in Total Project Costs, and (b) at least twenty-five (25) months have passed since the Effective Date."

4. Article II is further amended by the addition of a new Article 2.7, to read as follows:

"2.7 Reduction of Quantity of Oil Deliverable to Buyer. Notwithstanding any provision of Article II requiring Seller to deliver to Buyer quantities of crude oil up to 150,000 barrels per day, in the event six years after the Effective Date the

capacity of the Petrochemical Facility is less than 150,000 barrels per day, the maximum quantities deliverable by Seller for the remaining term of this Agreement shall be reduced to that quantity equal to the capacity of the Petrochemical Facility at such time. Coincident with such reduction, the figure "145,000 barrels" appearing several places in Article 2.4 shall be reduced by a like amount. For the purposes of determining capacity under this Article 2.7, the capacity of the Petrochemical Facility shall not be diminished or reduced because of temporary reductions due to market conditions or shutdowns in the Petrochemical Facility, regardless of cause."

5. The first sentence of Article 4.2.1 is hereby amended and revised to read as follows:

"4.2.1 Construction Obligations. In consideration of the obligations assumed by each party herein, Buyer will proceed with reasonable diligence to design, construct, start up and thereafter initiate operation of a petrochemical manufacturing and fuels refining facility in the State of Alaska with capacity to process at least 150,000 barrels of crude oil per day."

IN WITNESS WHEREOF, the Seller has caused this Agreement to be executed by its Commissioner of Natural Resources and the Buyer has caused this Agreement to be executed by its

Chairman of the Board, thereunto duly authorized by its Board of Directors in accordance with the certified seal, duly attested, to be affixed hereto, as of the day and year first above written.

THE STATE OF ALASKA

ATTEST:

BY:
Commissioner, Department of Natural Resources
"SELLER"

APPROVED AS TO FORM:

ALASKA PETROCHEMICAL COMPANY

ATTEST:

BY:
Chairman of the Board
"BUYER"

AGO 560204

Witton

SECOND AMENDMENT

Dated May 30, 1980

to the

AGREEMENT FOR THE SALE AND

PURCHASE OF STATE ROYALTY OIL

THIS SECOND AMENDMENT entered into as of the 30th day of May, 1980, by and between THE STATE OF ALASKA, hereinafter called the "Seller," acting by and through its Commissioner of Natural Resources, and THE ALPETCO COMPANY, a Florida general partnership, hereinafter called the "Buyer", and being the Second Amendment to the Agreement between Seller and Alaska Petrochemical Company entered into February 22, 1978, and assigned by Alaska Petrochemical Company to Buyer by an assignment executed December 13, 1979, and approved by Seller on February 4, 1980.

WITNESSETH:

WHEREAS, an Agreement for the Sale and Purchase of State Royalty Oil was duly executed on February 22, 1978, was amended on May 17, 1978, and was assigned to Buyer pursuant to an assignment executed December 13, 1979, and approved by Seller on February 4, 1980 (the "Agreement"); and

WHEREAS, the Agreement may be amended under Article XXII thereof; and

WHEREAS, Seller and Buyer desire to reduce the amount of crude oil that Seller must sell to Buyer under the Agreement; and

WHEREAS, Seller and Buyer desire that certain provisions of the Agreement be amended to clarify the obligations of Seller and Buyer thereunder;

NOW THEREFORE, in consideration of the mutual agreements and undertakings provided herein, Seller and Buyer hereby agree as follows:

1. The first Whereas clause on page 1 of the Agreement is hereby amended to read in its entirety as follows:

> "WHEREAS, it is in the mutual best interests of Seller and Buyer that Buyer construct and operate a facility in Alaska to process oil sold hereunder, said facility to have the capacity to process approximately 100,000 barrels of crude oil per stream day and to produce at least approximately 30,000 barrels per day of energy fuels for in-state distribution and sale; and"

2. Article I is hereby amended by deleting Articles 1.12, 1.13 and 1.14, renumbering Articles 1.6 through 1.11 to be Articles 1.7 through 1.12 and adding the following new Article 1.6:

> "1.6 'Facility' shall have the meaning defined in Article 4.2.1."

3. Each reference in the Agreement to "Petrochemical Facility" is hereby changed to "Facility."

4. Article 2.1 is hereby amended and restated in its entirety to read as follows:

"2.1 Sale of Prudhoe Bay Royalty Oil. Subject to the terms and conditions hereinafter provided, and subject to the prior obligations of Seller to deliver 5,000 barrels of crude oil per day under its contract with Golden Valley Electric Association, Inc. ("Golden Valley"), for the term and in the quantity now stated therein, Seller agrees to sell to Buyer, and Buyer agrees to buy from Seller, on the average, determined on an annual basis, approximately 75,000 barrels per day from Seller's royalty oil out of the crude oil production removed or sold from the Leases which the Seller has the right to take and is available to the Seller for taking in kind. However, in the event that 75,000 barrels per day of royalty oil is greater than 85% of Seller's royalty oil, then Seller shall be obligated to deliver said lesser quantity. Seller shall nominate that



AGO 560207

percentage of its royalty oil from the Leases which shall equal approximately 75,000 barrels per day on the average, except as provided in the preceding sentence. If total production from the Leases changes such that Seller's nomination results in Seller receiving from the Leases less than 75,000 barrels per day determined on an annual basis, then Seller, as expeditiously as possible (and subject to the terms of the Prudhoe Bay Unit Agreement if applicable), shall adjust its nomination to equal 75,000 barrels per day (except that Seller shall not be required to nominate more than 85% of Seller's royalty oil for sale to Buyer). Subject to the further provisions of this Article 2.1, Seller reserves the right to use or dispose of the remaining royalty oil. After the completion of the Facility, Seller's obligations to Golden Valley, if any, shall first be satisfied out of the royalty oil from the Leases not being sold to Buyer hereunder. In addition to the crude oil deliverable under the other provisions of this Article 2.1,

Buyer shall also possess the option to purchase an additional five percent (5%) of the total amount of Seller's royalty oil out of the Leases:

(a) in the event Seller enters into a contract with North Pole Refining Company ("NPR") granting NPR an option to purchase part or all of the fifteen percent (15%) portion of the oil out of the Leases not sold to Buyer under other provisions of this Article 2.1 and NPR does not exercise its option in full to purchase the oil on which it has an option, but Buyer's option to purchase shall extend only to the purchase of that quantity of oil from time to time not purchased by NPR: or

(b) in the event Seller does not enter into or have in effect a contract with NPR as recited in Article 2.1(a).

In the event it exercises its option under Article 2.1(a) or 2.1(b) above, Buyer agrees to give Seller an additional thirty (30) days notice of any

nominations under this Article in addition to the time for notice specified in the Prudhoe Bay Unit Agreement. In the event under any agreement with NPR Seller obtains a right to purchase from NPR any oil returned to the Trans Alaska Pipeline System by NPR, Seller shall assign all such rights to Buyer for the term of such NPR agreement.

Seller represents to Buyer that it has obtained sufficient advance written consents to termination and an agreement from Lessees (which to Seller's knowledge has been performed) to require similar consents from all subsequent purchasers agreeing to waive or terminate any supplier-purchaser relationship as to sufficient quantities of Seller's royalty crude oil out of the Leases to enable Seller to perform its delivery obligations under this Agreement.

Notwithstanding the foregoing provisions of this Article 2.1, Seller shall sell to Buyer approximately 100,000 barrels per day on the average, determined on an annual basis, after Buyer has begun processing crude oil in

the Facility, except that if 85% of Seller's royalty oil is less than 100,000 barrels per day then Seller shall be obligated to sell to Buyer only said lesser amount."

5. Article 2.2 is hereby amended and restated in its entirety to read as follows:

"2.2 Initiation of First Delivery. Buyer shall take delivery of crude oil under this Agreement beginning July 18, 1980. Buyer agrees that it shall fully comply with its obligations under Article 26.6."

6. Article 2.3 is hereby amended by replacing the words "ninety percent (90%)" in the first sentence thereof with the words "sixty percent (60%)," replacing the words "ten percent (10%)" in the fourth sentence thereof with the words "forty percent (40%)" and replacing the number "150,000" with the number "100,000" in the third from the last sentence thereof.

7. Article 2.4 is hereby amended by replacing the numbers "145,000" and "150,000" with the numbers "95,000" and "100,000," respectively, in each place that they appear in such Article, and replacing the words "seventy percent (70%)" in the first and third sentences thereof with the words "fifty percent (50%)."



AGO 560211

8. Article 2.5 is hereby amended by replacing the number "150,000" with the words "75,000 or 100,000, as the case may be," in the first sentence thereof.

9. Article 2.6 is hereby amended by replacing the words "on or prior to" in the third line thereof with the words "commencing on" and inserting after the words "Date of First Delivery" in the fourth line thereof the following words:

", and shall maintain at all times thereafter,"

10. Article 2.7 is hereby amended and restated to read in its entirety as follows:

"2.7 Reduction of Quantity of Oil Deliverable to Buyer. Notwithstanding any provision of Article II requiring Seller to deliver to Buyer quantities of crude oil up to 100,000 barrels per day, in the event that on or before December 31, 1985, the designed capacity of the Facility is less than 100,000 barrels per stream day, the maximum quantities deliverable by Seller for the remaining term of this Agreement shall be reduced to that quantity equal to the designed capacity of the Facility at such time. Coincident with such reduction, the figure '95,000 barrels' appearing

several places in Article 2.4 shall be reduced by a like amount."

11. A new Article 2.8 is hereby added as follows:

"2.8 Nomination of Crude Oil. It is expressly recognized that as to royalty oil out of the Leases, and perhaps to royalty oil on future production, the Seller may only nominate its royalty oil by percentage, and not by a fixed amount of barrels. Therefore, whenever the Seller is to deliver, and Buyer is to receive, a fixed number of barrels, either "75,000" or "100,000", it is understood that Seller can only nominate a percentage of its royalty share that, upon the best information available to Seller, will equate approximately to the fixed number of barrels to be delivered. For example, it is recognized that fluctuation in production may sometimes cause the existing percentage nomination to differ substantially from the fixed number of barrels required herein. If there is a significant change in production, Seller shall be obligated only to increase or decrease its royalty percentage pursuant to Lease

or Prudhoe Bay Unit procedures so as to again approximately equate to the fixed number of barrels required. In addition, and as another example, it is also expected that temporary increases or decreases in production will result in deliveries hereunder to fluctuate around the fixed number of barrels set forth herein."

12. Article 4.2.1 is hereby amended and restated in its entirety to read as follows:

"4.2.1 Construction Obligations. In consideration of the obligations assumed by each party herein, upon approval by the Commissioner pursuant to Article 10.2 hereof Buyer will proceed with diligence to construct, start up and thereafter initiate operation of a facility in the State of Alaska with capacity to process approximately 100,000 barrels of crude oil per stream day substantially in accordance with the schedule presented to the Commissioner pursuant to Article 10.2 hereof. Such facility shall include substantially all of the facilities approved by the Commissioner pursuant to Article 10.2

hereof. Incidental changes and modifications of the facilities prior to start-up may be made without the consent of the Commissioner, but any major changes in the facilities prior to start-up must be approved by the Commissioner. Final process configuration and production rates from the facility will be determined by (i) marketing considerations and (ii) process optimization of the overall facility design to produce the desired products in the most effective manner. Variations in design, configuration and process optimization will occur throughout the anticipated life of the facility. Such facilities shall be hereinafter referred to as the 'Facility.'"

13. Article 4.2.3 is hereby amended and restated in its entirety to read as follows:

"4.2.3 Progress Reports by Buyer. From the date of the Second Amendment and until December 31, 1981 (and thereafter until the start-up of the Facility if the Commissioner gives his approval pursuant to Article 10.2 hereof) on or before the twentieth (20th) day after

each calendar quarter, Buyer shall furnish the Commissioner a written progress report as of the end of such calendar quarter describing its progress on the engineering, design and construction activities of Buyer with respect to the Facility, progress in the marketing of the products therefrom and the proposed financings. Such reports, or portions thereof, shall be held confidential as requested by Buyer to the extent permitted by law."

14. Article 4.4 is hereby amended by deleting the words "fuels and petrochemical" from the fourth sentence thereof.

15. Article 10.2 is hereby amended and restated in its entirety to read as follows:

"10.2 Termination by Seller. Notwithstanding anything else to the contrary in this Agreement, this Agreement shall terminate and Seller shall have no further obligation to deliver any further crude oil to Buyer (i) upon failure of Buyer to proceed with reasonable diligence pursuant to the provisions of Article 4.2.1 or Article 10.2.1 or

(ii) 30 days after the disapproval by the Commissioner of the Facility pursuant to the provisions of this Article 10.2.2, except that Buyer pursuant to Article 14.2 shall have the obligation to purchase royalty oil if Seller elects to sell such oil to Buyer.

10.2.1 Buyer's Obligations. Buyer promptly after the date of the Second Amendment shall proceed with reasonable diligence to do the following:

(a) configure, engineer and design the Facility, which shall have a capacity to process at least 100,000 barrels of crude oil per stream day;

(b) obtain all financing necessary to pay for the construction of the Facility including entering into all definitive documents relating to the loan of funds that are necessary to finance the costs of construction of the Facility;

(c) enter into all construction contracts that



AGO 560217

are necessary to provide for the construction of the Facility;

(d) provide a construction schedule and completion date for the construction of the Facility;

(e) obtain all material permits and licenses relating to the Facility that are necessary for the construction of the Facility; and

(g) enter into all leases of real property for the site of the Facility.

10.2.2 Commissioner's Approval. On or before December 31, 1981, Buyer shall provide to the Commissioner documents evidencing Buyer's diligence in proceeding to do all of the foregoing. If within 60 days from submission of the documents, the Commissioner determines that such documents do not demonstrate completion of each of the items listed in Article 10.2.1, the Commissioner may terminate this Agreement by giving thirty (30) days' notice to



AGO 560218

Buyer. If all of the foregoing have been completed, the Commissioner shall have sixty (60) days from submission of the documents to review them and either approve or disapprove the Facility. The approval shall be at the sole and absolute discretion of the Commissioner. Upon approval, Buyer shall construct the Facility in compliance with Article 4.2.1 hereof. Thirty (30) days after disapproval by the Commissioner this Agreement shall terminate and Buyer shall have no further right whatsoever to receive any crude oil from Seller, except that Buyer, pursuant to Article 14.2 shall have the obligation to purchase royalty oil if Seller elects to sell such oil to Buyer.

10.2.3 Facility Start-up. If Buyer has not begun processing crude oil in the Facility on or before March 1, 1986, the Commissioner may terminate this Agreement including any obligation to make any further deliveries of crude oil on March 31, 1986, or at any time thereafter by giving notice of termination



AGO 560219

to Buyer prior to start-up of the Facility."

16. Article 14.1 is hereby amended by deleting from the third line of clause (ii) thereof the words "into petrochemicals."

17. Article 16.1 is hereby amended by deleting the address of Buyer and replacing it with the following addresses:

"The Alpetco Company
601 W. 5th Avenue, #320
Anchorage, Alaska 99501

and
The Alpetco Company
3700 Buffalo Speedway
Houston, Texas 77098"

18. Article 23.2 is hereby amended by deleting the third sentence thereof.

19. Article 26.7 is hereby amended by replacing the words "extensions of time periods" with the word "approvals."

20. Seller and Buyer hereby ratify and confirm all provisions of the Agreement, as amended by this Second Amendment.

21. Seller and Buyer each hereby represent and warrant to each other that it has full power and authority to execute, deliver and perform this Second Amendment and that this Second Amendment, and the Agreement as amended by this Second Amendment, constitute valid and binding obligations of such party and are enforceable against such party in accordance with their terms.



AGO 560220

22. The Agreement as amended by this Second Amendment shall become effective upon its due execution and delivery by each of Seller and Buyer and if approved by the Alaska Royalty Oil and Gas Development Board and the Alaska State Legislature, to the extent such approvals are required by Article XXII of the Agreement. This Second Amendment shall be null and void if it is not so approved on or before June 7, 1980.

IN WITNESS WHEREOF, the Seller has caused this Second Amendment to be executed by its Commissioner of Natural Resources and the Buyer has caused this Second Amendment to be executed by its General Manager as of the day and year first above written.

THE STATE OF ALASKA

ATTEST:

_____ BY: _____
Commissioner, Department of Natural Resources

APPROVED AS TO FORM:

_____

THE ALPETCO COMPANY

ATTEST:

_____ BY: _____
General Manager

I, Frank M. Smith, certify that I am the Vice President of the Buyer in the above contract, that Dudley K. Parker was then General Manager of said Buyer, that said Agreement was duly signed for and in behalf of Buyer by authority of its governing body, and is within the scope of its powers.

_____
Vice President

(CORPORATE SEAL)

THE STATE OF ALASKA )
) ss.
FIRST JUDICIAL DISTRICT )

THIS IS TO CERTIFY that on this 30th day of May, 1980, before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared Robert E. LeResche, to me known to be the Commissioner of Natural Resources for the STATE OF ALASKA, and known to me to be the person who executed the within instrument on behalf of the STATE OF ALASKA, and acknowledged to me that the same was signed as a free act and deed of the STATE OF ALASKA for the purposes and uses therein stated.

WITNESS my hand and notarial seal the day and year last above written.

_____
NOTARY PUBLIC in and for Alaska.
My commission expires: _____

THE STATE OF ALASKA )
) ss.
FIRST JUDICIAL DISTRICT )

THIS IS TO CERTIFY that on the 30th day of May, 1980, before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared the General Manager of THE ALPETCO COMPANY, a Florida general partnership, and known to me to be the person who executed the within instrument on behalf of the partnership herein named, and acknowledged to me that the same was signed as a free act and deed of said partnership for the uses and purposes therein stated and pursuant to its authority.

WITNESS my hand and notarial seal the day and year last above written.

NOTARY PUBLIC in and for Alaska.
My commission expires: _____

Royalty Bd?

Leg. Approval?