1780 HLC SB 84

August 25, 1981

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

10/29
T152

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Testimony by

Max D. Nalley

Exxon Company USA
February 19, 1982

before the

House Labor and Commerce Committee

regarding

2nd HCS CSSB 84 (L&C)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

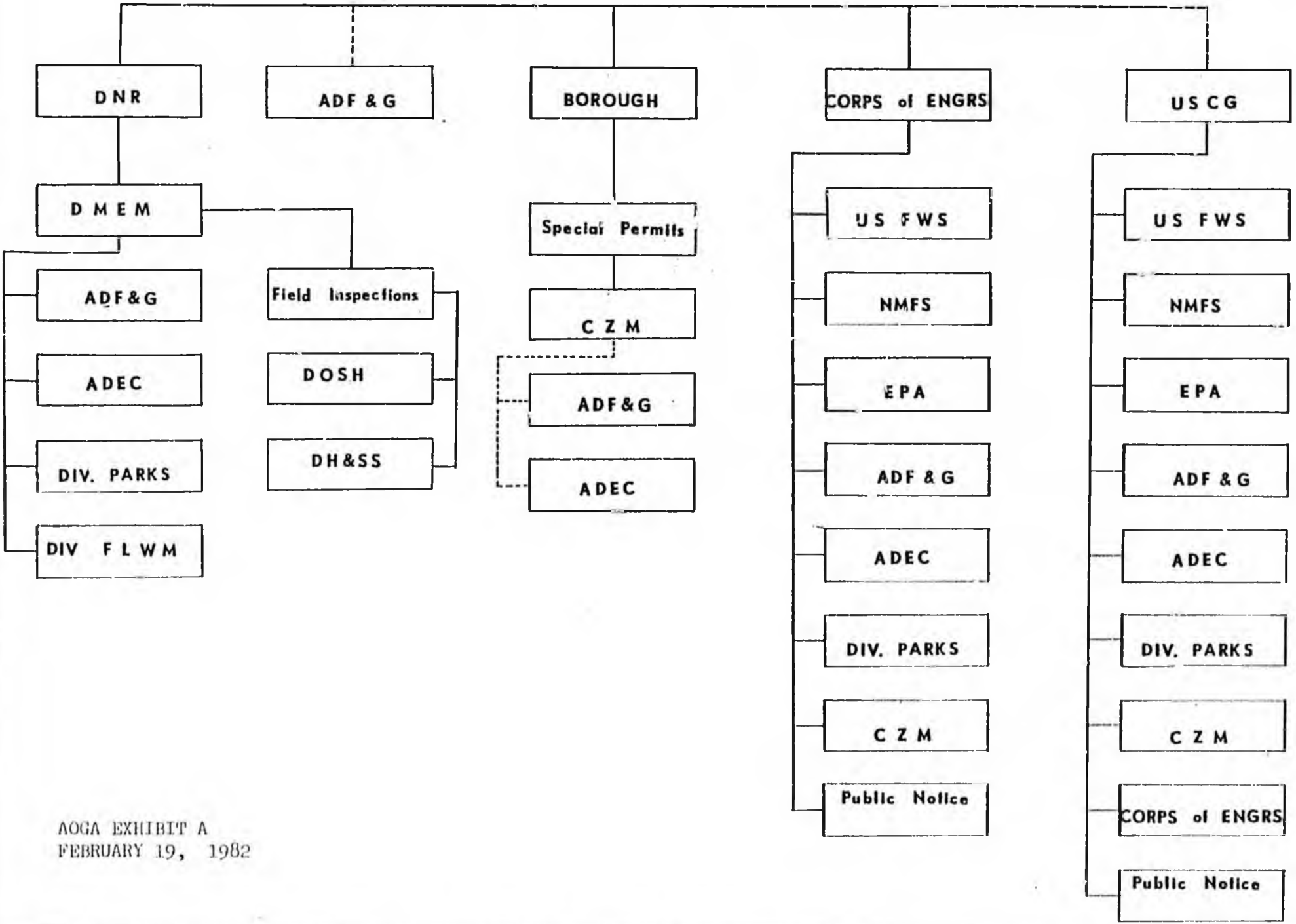
THE STATE WILL MAKE ITS POLICY DECISION REGARDING OIL AND GAS EXPLORATION AND DEVELOPMENT IN A GIVEN AREA. ONCE THAT OVERALL POLICY DECISION HAS BEEN MADE BY THE STATE, FROM THAT POINT ON THE ISSUE SHOULD BE HOW SPECIFIC PERMIT ACTIVITIES (BOTH INDIVIDUALLY AND COLLECTIVELY) AFFECT LOCAL AREAS, NOT WHETHER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

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

THANK YOU VERY MUCH.

RHW/SPEECH/066/es

AGENCIES INVOLVED IN OPERATING PERMITS ON STATE LANDS



AOGA EXHIBIT A
FEBRUARY 19, 1982

Original sponsors: Bennett, Parr and Fahrenkamp

IN THE SENATE

BY THE LABOR AND COMMERCE COMMITTEE

2d HOUSE CS FOR CS FOR SENATE BILL NO. 84 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWELFTH LEGISLATURE - SECOND SESSION

A BILL

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

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

* Section 1. FINDINGS. The legislature finds that

(1) the orderly development of state resources is being unnecessarily delayed by the length of time required to obtain permits from state agencies, by the complexity of the permitting process, and by the number of agencies involved in the permitting process;

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

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

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

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

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

ARTICLE 8A. PERMIT PROCESSING.

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

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

(2) class II permits, for which, because of a necessary public notice or interagency review period, a final decision cannot be issued within 30 days. A final decision on a class II permit must be issued within 65 days after the date of receipt of a completed permit application.

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

Sec. 44.62.633. OTHER REGULATORY REQUIREMENTS FOR PERMIT PROCESSING. (a) Upon a finding by the head of a resource agency that a permit being considered involves unusually complex issues so that the agency cannot render a final decision within the time period specified in AS 44.62.632(a), the head of the agency may prescribe a time period within which the final decision will be made. The finding of the head of the agency may be appealed by the applicant to the superior court under the Appellate Rules of Procedure. The time period may not be extended more than 120 days beyond the time period specified in AS 44.62.632(a).

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

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

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

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

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

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

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

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

(d) Nothing in this section grants a resource agency the authority to request information beyond the authority given to it by other statutes.

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 44.62.638. REVIEW BY THE SUPERIOR COURT. (a) Judicial review by the superior court of a final decision issued under AS 44.62.632 - 44.62.637 may be had by filing a notice of appeal in the superior court in accordance with the applicable Rules of Appellate Procedure. The right to appeal is not affected by the failure to seek further review under AS 44.62.637. The review is governed by the provisions of AS 44.62.560(b) - (e) and AS 44.62.570.

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

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

(c) As used in AS 44.62.632 - 44.62.638,

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

(2) "permit" means a permit, license, certification, consistency determination, or other authorization or approval issued by a resource agency as a written document that is required to be obtained or is solicited from a state agency before the construction or operation of a project; "permit"

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

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

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

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

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

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

Re: SB 84

Amendment #1

Main motion (amendment)

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

Amendment #2

amendments to amendment

Rep. Rogers moved to amend the amendment to accept the bill with all the governor's proposed amendments.
For: Rogers, Gardiner Against: Martin, Bylsma, Randolph
Amendment failed.

Amendment #3

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

Amendment #4

Rep. Rogers moved to accept the governor's proposed amendment #11.
For: kogers, Gardiner Against: Martin, Bylsma, Randolph
Amendment failed.

Amendment #5

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

Amendment #6

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

Amendment #7

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

Amendment #8

Rep. Rogers moved, p. 2, line 12, after word "application.", delete period, and insert ", unless a public hearing is held on the application, in which case a final decision must b3e issued within 75 days after the date of receipt." Discussion.
For: Rogers, Gardiner, Bylsma Against: Randolph, Martin
Amendment passed.

Amendment #9

Rep. Rogers moved, p. 2, line 28, add, ", unless the applicant otherwise agrees."
No objection.
Motion passed unanimously. should be after line 28

Amendment #10

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

Amendment #11

Rep. Rogers moved the governor's proposed amendment #3.
For: Gardiner, Rogers Against: Bylsma, Randolph, Martin
Motion failed.

Amendment #12

Rep. Rogers moved, p. 5, lines 3-5, to delete subsection (d) and insert new subsection (d), using language from governor's proposed amendment #5. Rep. Randolph asked unanimous consent.
No objections.
Motion passed unanimously. ~~Should be Sec. 1, subsection (e)~~

Amendment #13

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

Amendment #14

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

Amendment #15

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

Amendment #16

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

Amendment #17

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

Amendment #18

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

Amendment #19

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

Amendment #20

main amendment

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

Amendment #21

motion

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

Amended - see pages 2, 5, 6

Original sponsors: Bennett, Parr and Fahrenkamp

IN THE SENATE

BY THE LABOR AND COMMERCE COMMITTEE

2d HOUSE CS FOR CS FOR SENATE BILL NO. 84 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWELFTH LEGISLATURE - SECOND SESSION

A BILL

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

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

* Section 1. FINDINGS. The legislature finds that

(1) the orderly development of state resources is being unnecessarily delayed by the length of time required to obtain permits from state agencies, by the complexity of the permitting process, and by the number of agencies involved in the permitting process;

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

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

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

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

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

ARTICLE 8A. PERMIT PROCESSING.

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) Nothing in this section grants a resource agency the authority to request information beyond the authority given to it by other statutes.

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

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

Except as otherwise required by federal law,

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

delete this subsection; replace with attached *(Eighth Amendment 5)

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

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

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

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

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

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

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

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

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

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

Sec. 44.62.638. REVIEW BY THE SUPERIOR COURT. (a) Judicial review by the superior court of a final decision issued under AS 44.62.632 - 44.62.637 may be had by filing a notice of appeal in the superior court in accordance with the applicable Rules of Appellate Procedure. The right to appeal is not affected by the failure to seek further review under AS 44.62.637. The review is governed by the provisions of AS 44.62.560(b) - (e) and AS 44.62.570.

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

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

(c) As used in AS 44.62.632 - 44.62.638,

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

(2) "permit" means a permit, license, certification, consistency determination, or other authorization or approval issued by a resource agency as a written document that is required to be obtained or is solicited from a state agency before the construction or operation of a project; "permit"

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

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

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

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

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

AMENDMENT 5

Page 5, ls. 3-5.

Delete existing subsection (d) and insert the following:

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

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K—STATE CAPITOL
JUNEAU, ALASKA 99811

March 2, 1982

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

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

Dear Representative Martin:

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

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

Sincerely,

WILSON L. CONDON
ATTORNEY GENERAL

By: Lauri J. Adams
Lauri J. Adams
Assistant Attorney General

LJA:dlm

Encls.

03-C5LH

AMENDMENT 1 Bates

Expectation of number of public hearings — Rep Rogers

Page 2,1.12..

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

AMENDMENT 2

Page 2, ls. 26-28. [redacted] already permitted Passed this only

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

AMENDMENT 3

Page 4, lines 6 -- 29

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

(a) There are established lead agencies which are solely responsible for issuing coastal management consistency determinations under AS 46.40 and for preparing and submitting state comments on federal permit applications for all projects which include the conveyance of an interest in state land or water or at least one class II permit decision. The lead agency may vary for classes of activities, but shall be that agency that has principal responsibility for authorizing the overall activity. For classes of activities for which no agency with principal responsibility exists the governor shall designate a lead agency by administrative order no later than October 1, 1982. In performing its functions under this section the lead agency shall consult with other resource agencies and with coastal resource districts under AS 46.40. The lead agency shall balance competing factors in reaching its decision. Substantive consideration shall be given to the comments of resource agencies within their primary areas of expertise.

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

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

AMENDMENT 4

OK

Page 5, ls. 1-2. Yes —

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

AMENDMENT 5

Page 5, ls. 3-5. Passed

Delete existing subsection (d) and insert the following:

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

AMENDMENT 6

No

Page 5, lines 22 - 23.

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

Need redrafting.

AMENDMENT 7 fails

Page 5, line 24. See ~~Sec~~. Sec 22 & 23

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

P. Dept. of Conservation.

Present wording may have to be balanced with Constitu. of State

We do have an exception —

Page 6, ls. 12-13. ~~AB~~ - Passed

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

AMENDMENT 9

Sounds fair

Page 6, ls. 15-17.

self destructive ⇐⇒ No.

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

This allows judges to establish policies.?

OK 4/22 AMENDMENT 10 Passed

Page 5, 1s. 16-17. [there is a recommendation W.D.

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

AMENDMENT 11

Page 7, line 12

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

Terry

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

Thanks,

Mike

cancelled -

re-scheduled for Feb 11th or 15th

Brown HB 146
595

Mary please call Mike Hershberger on finalizing the date.

AK. Oil + Gas Assc

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

Mary

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

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

preferred

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

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

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

alternative

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

~~(5)~~ "~~Substantive consideration~~ ~~means that~~" where documented factual statements or data are submitted by a resource agency or a coastal resource district, those statements or data ~~shall be deemed~~ are considered true unless ~~the lead agency or permit applicant refutes such~~ the statements or data are refuted by a preponderance of the evidence. The lead agency shall consider opinions, conclusions or recommendations submitted by the commenting agency, but may, in its discretion, reach contrary opinions, conclusions or recommendations according to the evidence received.

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

MSG 82-00007471 PRTY 1 02/10/82 17:28:37 ORIG: LK00 IN= 0007 OUT= 0127
FROM: SANDY, KETCHIKAN TO: JUNEAU INFO
TARGET: LJH2 SUBJ: POM

PAGE 0001

TO: REP. MARTIN

FROM: JEANNE SANDE, RT. 1, BOX 1096, KETCHIKAN, AK 99901 PHONE 225-5233

RE: SB 84

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

MSG 82-00006809 PRTY.1 02/08/82 18:34:58 ORIG: LA00 IN= 0021 OUT= 0148
FROM: JEAN, ANCH INFO TO: POM, JUNEAU INFO
TARGET: LJH2 SUBJ: POM

PAGE 0001

Save and
Let him know when meeting
is scheduled.

TO: REPRESENTATIVE MARTIN

FROM BILL SAUL
SRA 4007-A
ANCHORAGE 99502 (H) 345-6477 (W) 659-4356

RE: SB 84

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

2-10-82 Telephone sent @ 8 A.M.
We will be hearing a work draft on SB 84 on Friday the 12th
Letter to Conf Com. ok 1:15 p.m. ~~Date~~ Your comments will be entered
into each committee members file. Rep. Terry Martin

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

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

September 1, 1981

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

Re: Enclosed Material on
Uniform Procedural Regulations
and SB 84

Dear Ray:

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

1. The Executive Summary of the draft regulations, for which public notice was given in January of this year. The Executive Summary highlights the major issues surrounding the draft regulations which emerged from working sessions held with industry and environmental groups late in 1980;

2. The complete public comment file on the draft regulations;

3. An April 6, 1981 memorandum from myself to Governor Hammond with respect to major issues surrounding the proposed final regulations. In particular, the memorandum addresses the criticism raised by public interest groups that the regulations "balkanize" the State's Coastal Management Program, and give excessive authority to the Department of Natural Resources as a coastal management "lead agency";

4 The final regulations as adopted by the departments of Natural Resources, Environmental Conservation and Fish & Game, and the Alaska Coastal Policy Council, in April of this year. As you are aware, these regulations have not been filed with the Lieutenant Governor's Office because of uncertainty regarding possible permit reform legislation;

5. The Department of Law's analysis of CSSB 84. The analysis addresses the Senate Resources Committee version of the bill;

6. Proposed changes in the Second Rules Committee version of SB 84 discussed at a recent meeting with various AOGA representatives. As the enclosed cover letter to the suggested changes indicates, the primary areas of remaining disagreement between the administration and the oil industry relate to the proper role of local governments in State decision making--at least when the local government has an approved coastal management program--and the length of the administrative appeals process; and

7. Our permit reform mailing list.

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

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

Sincerely yours,

WILSON L. CONDON
ATTORNEY GENERAL

By: Jonathan K. Tillinghast
Assistant Attorney General

JKT/kh

Enclosures

TESTIMONY OF J. D. BERTINO

CHEVRON U.S.A. INC.

ON

PROPOSED UNIFORM PROCEDURES FOR PERMITS,
CONSISTENCY DETERMINATIONS AND APPEALS

FEBRUARY 6, 1981

ANCHORAGE, ALASKA

I am an atty.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22AAC 10.020. DEADLINES ON PERMIT ISSUANCE.

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

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

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

22AAC 10.030. ADDITIONAL INFORMATION.

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

22AAC 10.040. SIGNING OF APPLICATIONS.

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

22AAC 10.050. ORAL PUBLIC HEARINGS.

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

22AAC 10.130. INTERAGENCY REVIEW.

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

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

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

22AAC 10.500 ET SEQ. COASTAL MANAGEMENT CONSISTENCY DETERMINATIONS.

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

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

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

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

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

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

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

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

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

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

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

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

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

Additional Comments:

1. Comments of Other Agencies:

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

2. State Agency Comments on Federal Permit Applications.

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

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

3. Automatic Approval of Permit Applications.

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

Alaska Oil and Gas Association

AOGA

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

December 31, 1980

FINAL

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

Re: Draft Uniform Procedures

Dear Mr. Tillinghast:

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

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

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

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

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

1. These regulations do not provide for a direct appeal to the Superior Court for a permit applicant who has been either denied a permit, or a permit condition is attached to which the applicant does not agree. The appeal procedure may be addressed in later regulations; however, any regulations proposed should allow a direct appeal to the Superior Court following the agency's initial decision on the permit application.

2. Since various sections of the regulations allow the commissioner to request additional time, provide public notice, and set a public hearing, in essence every permit application for oil and gas related activities will be a Class II permit. Class II permits provide for a minimum of 65 days review by the agency and in many cases this is not necessary or required to expedite the permitting process.

3. The provisions set forth in AAC 10.020, allowing extension of times, are so broad that effectively there is no deadline set in the permit review process requiring an agency to act. In addition, there are no penalty provisions requiring issuance of a permit if the agencies take more time than set forth in the regulations.

4. There is no provision that precludes the commissioner from making a finding, that as a result of a public hearing, additional time will be necessary to review the permit application. Thus, the commissioner could certify that additional time is necessary after the permit has been the subject of a public hearing.

5. In section 10.030(a) the agency should specify within 10 days of receipt of an application whether the application is complete, and if the application is incomplete specify the data necessary to complete the application. No request for additional information should be made by the agency after the additional information has been supplied by the applicant.

6. In sections 10.030(b) and (c) there should be no extensions of time for reviewing an application which is otherwise complete where the agency is requesting more information than is generally required. If the agency requests additional information that is generally not required, the time constraints imposed on the agency for action should remain the same.

7. Any authorized employee should be allowed to sign a permit application on behalf of a corporation.

8. Public hearings should only be held if required by a statute. The present public notice provisions and opportunities to comment are sufficient to receive diverse comments regarding a project and permit proposal.

9. There should be a specific provision requiring the agency to act, or if the permit application is not approved or denied within the specified time period, the permit should be approved by operation of law. Existing regulations on surface use permits provide for such automatic approval. (See 11 AAC 96.030(b)).

10. Where permits are denied or approved with stipulation, there should be a section which requires the agency to set forth the reasoning and justification for either (a) the denial or (b) the reasons supporting the need for permit stipulations, and whether these permit stipulations are reasonable and necessary. Many permits now being issued contain boiler-plate language or have stipulations which have no application to the permitted activity.

11. All permits should be for the life of the project as proposed by the applicant, and not for a specified term unless such term is required by statute.

12. If a streamlined permitting process is developed, there is no reason for Memorandums of Understanding between various agencies for processing applications. It is not clear why Memorandums are necessary for internal operations of the agencies. Substantial changes have resulted from such internal Memorandums which defeat the intent of established procedures.

13. Regarding AAC 10.130 a commenting agency does not have the full record before it and therefore should not be allowed to recommend denial of a permit. Such a recommendation, when viewed in conjunction with the definition

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

14. Regarding Coastal Zone Management - one consistency determination should be made. Once a decision is made to commit state resources for a particular purpose one consistency determination should be made which discusses that determination and resulting projects. For instance, if the state determines that lands should be leased for potential oil and gas exploration and development, one consistency determination should be made at the time the lands are proposed for sale. Later, when leases are purchased, and exploration operations commenced, no additional consistency determination should be required. Also, any state agency reviewing consistency should not be able to impose additional comments or conditions on any federal permit or state permit. The agency should not submit comments which are different from those originally submitted regarding a state permit application before them or where they have been requested to comment on a permit application before another agency.

15. State permitting procedures are not likely to improve until the concept of "a lead agency" having sufficient authority to make permit decisions is adopted. Under present procedures, each decision is fragmented on an equal weight basis as each agency maneuvers to have its concerns assume a dominant role. Broad state and public interest is ignored in the process while the permit issuance is delayed until the last possible moment. These circumstances frequently compel the applicant to accept unwanted, unnecessary and inappropriate stipulations.

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

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

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

Very truly yours,

O. K. Gilbreth, Jr.

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

OKG:km

FINAL

TESTIMONY

OF THE

ALASKA OIL AND GAS ASSOCIATION

ON

UNIFORM PROCEDURES FOR PERMITS, CONSISTENCY DETERMINATIONS AND APPEALS

FEBRUARY 6, 1981

ANCHORAGE, ALASKA

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

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

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

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

1. Establishment of the shortest feasible deadline for the issuance of state permits for natural resource development;

2. Establish uniform permit procedures;

3. Explicitly define the rights of the applicant, and other persons in the permitting process; and

4. Streamlining the state's coastal management decision-making process.

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

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

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

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

Without a substantial re-write and simplification, we

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 4.--Add two new sections:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Alaska Oil and Gas Association

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

February 26, 1981

FINAL

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

Gentlemen:

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

We appreciate this opportunity to submit comments.

Very truly yours,

W. W. Hopkins

WILLIAM W. HOPKINS
Executive Director

Attachment