

ALPHA INSTITUTE OF TECHNOLOGY

1781 HLC SB - SB 135

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

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

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

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

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

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

22. AAC 10.050 Oral Public Hearings

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

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

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

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

The remainder of the section would require renumbering.

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

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

11 AAC 10.500(c)

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

Articles 6, 7 and 8 Appeals

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

ARTICLE 6. APPEALS

22 AAC 10.600 Review by the Commissioner

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

22 AAC 10.610 Review by the Superior Court

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

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

Thank you for the opportunity to comment.

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

INTRODUCTION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

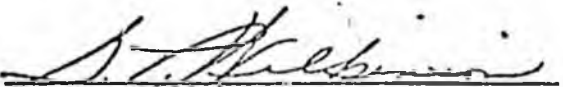
11. The General Appeals provisions should allow the applicant the opportunity to directly appeal to the Superior Court if a permit application is denied, or if unreasonable and unsupportable conditions are attached to the permit. Since time can be extremely critical, the applicant should be able to seek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

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

CONCLUSION

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

RESPECTFULLY SUBMITTED this 25th day of February,
1981.


G. T. Wilkinson
Vice President

TESTIMONY OF J. D. BERTINO .

CHEVRON U.S.A. INC.

ON

PROPOSED UNIFORM PROCEDURAL REGULATIONS

FEBRUARY 6, 1981

ANCHORAGE, ALASKA

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22AAC 10.020. DEADLINES ON PERMIT ISSUANCE.

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

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

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

22AAC 10.030. ADDITIONAL INFORMATION.

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

22AAC 10.040. SIGNING OF APPLICATIONS.

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

22AAC 10.050. ORAL PUBLIC HEARINGS.

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

22AAC 10.130. INTERAGENCY REVIEW.

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

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

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

22AAC 10.500 ET SEQ. COASTAL MANAGEMENT CONSISTENCY DETERMINATIONS.

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

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

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

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

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

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

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

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

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

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

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

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

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

Additional Comments:

1. Comments of Other Agencies:

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

2. State Agency Comments on Federal Permit Applications.

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

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

3. Automatic Approval of Permit Applications.

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

EXXON COMPANY, U.S.A.

1800 AVENUE OF THE STARS • LOS ANGELES, CALIFORNIA 90067

LAW DEPARTMENT

February 25, 1981

Re: Uniform Procedures for
Permits, Consistency
Determinations and Appeals

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

Dear Mr. Tillinghast:

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

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

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

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

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

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

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

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

Again, we thank you for consideration of our comments.

Very truly yours,



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907-263-3772

February 9, 1981

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

Re: Uniform Procedural Regulations

Dear Mr. Tillinghast:

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

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

A. GENERAL COMMENTS

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

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

"ADD A NEW ARTICLE 6 AS FOLLOWS:

LEAD AGENCY PROVISIONS

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

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

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

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

22 AAC 10.610. COMMENTS OF OTHER STATE AGENCIES.

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

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

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

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

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

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

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

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

22 AAC 10.510 should be changed to read as follows:

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

22 AAC 10.520 shall be changed as follows:

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

22 AAC 10.540 shall be changed as follows:

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

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

22 AAC 10.550 shall be changed as follows:

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

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

"22 AAC 10.570 shall be changed as follows:

DELETE SUBSECTION (b).

22 AAC 10.920 shall be amended as follows:

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

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

members of the Coastal Policy Council.]"

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

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

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

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

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

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

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

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

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

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

B. SPECIFIC COMMENTS.

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,

James D. Linxwiler

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

TEXACO

PETROLEUM PRODUCTS

February 24, 1981

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

UNIFORM PROCEDURAL REGULATIONS

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

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

Gentlemen:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

This change is for the same reason as 510.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

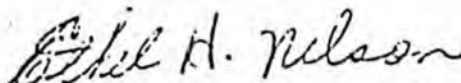
6 AAC 80.900(20). We recommend deletion of this section as well as section 6 AAC 80.010(b) because they are not subject to these uniform procedural regulations. Further, the attempt to amend .900(20), in the past has created considerable controversy, and most likely will again, with the possibility of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

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

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

Very truly yours,

TEXACO inc.



Ethel H. Nelson
Advanced Exploration Land Representative

EHN:bjs

cc: Mr. Glenn Harrison, Director, DHEM

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

DATE: April 22, 1921

FILE NO:

TELEPHONE NO:

FROM: Robert E. LaRasche
Commissioner
Department of Natural Resources

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

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

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

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

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

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

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

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

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

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

April 22, 1931

-3-

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

Nevertheless, there are many laudable portions of these regulations which will have a beneficial effect on the efficiency of State government. Moreover, this is the first permit reform project which has reached the point of having a conclusion. I ask that the serious deficiencies in the draft regulations outlined above be reviewed, but I will abide by the consensus of the cabinet on the final result.

MEMORANDUM

State of Alaska

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF MINERALS & ENERGY MANAGEMENT

TO: Robert E. LeResche,
Commissioner

DATE: January 2, 1981

Geoffrey Haynes
Deputy Commissioner

FILE NO:

276-5113

TELEPHONE NO:

FROM: Glenn Harrison,
Director

SUBJECT: Personnel Requirement,
Uniform Permit Procedure
December 9, 1980 Draft

Personnel requirements necessary to administer the Uniform Permit Procedures are estimated below. The method used in the calculation is clearly presented. The results of the estimation are in addition to the two people request associated with the proposed unit and plan of operation regulations.

The estimate is organized into four topics: analysis of 1980 data; projection of 1980 data to 1981; identification of procedures not presently used which will become necessary with this formal method and percent of applications affected; calculation of personnel requirements.

I. ANALYSIS OF APPLICATIONS RECEIVED AT DNEM IN 1980:

Total Processed: 340

TYPE	OIL AND GAS	MINING
Class I	119	81*
Class II	134	6

* There was an increase in 1980 of 13,500 mining claims, bringing total claims to 35,000. If only 10% of those 1980 claims file MLUP Class I applications this spring - and the proposed regs would require 100% to file - 1350 applications at a minimum could be expected. Average processing time per application was estimated by the LMT that has sole responsibility for processing this type of application at 8 hrs each. Using 4 hrs * 1350 applications = 5,400 hours. An estimate of 1750 hours per man per year yields 3+ positions. These positions were already requested in the 1982 budget.

Determination of Mean time for processing applications in 1980:

Petroleum Engineer	1750 hours
Coastal Zone Management	1750
Land Management Technician	1750
Petroleum Geophysicist	1000
Total processing time for 1980:	6250 hours

6250 hr	=	18.4 hours per application
340 applications	=	mean processing time

II. PROJECTION ESTIMATE FOR APPLICATIONS IN 1981.

Estimate: 390-460 applications

* * See attached graph * *

Note: This ignores the increase in mining MLUP activity noted earlier.

III. IDENTIFICATION OF PROCEDURES NOT PRESENTLY REQUIRED AND ASSOCIATED ESTIMATES.

- o Give written notice to applicant within 15 days or 30 days if additional information is necessary.
Percent applications affected: 50%
Time: * 1 hour Net Effect: 1 hr x 0.50 = 0.5
- * Time includes researching, writing, typing, proofing and final copy preparation.
- o Establish and keep track of deadlines, starting and stopping the deadline clock (sec. 30 & throughout)
Percent applications affected: 100%
Time: 1 hour Net Effect: 1 x 1.00 = 1 hr
- o Determine whether to hold a hearing & carry out decision, notify applicant (sec 50).
Percent applications affected: 10% (see attached list of 1980 applications where some 30 applications out of the 340 considered controversial have been highlighted)
Time: 4 hours Net Effect: 4 x 0.1 = 0.4 hr
- o Serve a copy of permit decision on applicant, resource agencies or anyone who has submitted request for it (sec. 60)
Percent applications affected: 100%
Time: 1 hour Net Effect: 1 x 1.0 = 1 hr
- o Prepare justification of decision if testimony opposed to decision presented at hearing (sec 100).
Percent applications affected: 10%
Time: 4 hours Net Effect: 4 x 0.1 = 0.4 hr
- o Serve justification of decision on everyone within 5 days if decision appealed (sec 100)
Percent applications affected: 5%
Time: 1 hour Net Effect: 1 x 0.05 = NIL

- o Give public notice at least twice for Class II, with summary of proposed activity (sec. 120)
Percent applications affected: (140/340) 40%
Time: 3 hr Net Effect: 3 x 0.40 = 1.2 hr
- o Prepare a separate staff recommendation (sec. 140)
Percent applications affected: (140/340) 40%
Time: 8 hrs Net Effect: 8 x 0.40 = 3.2
- o Hold preissuance conference at applicant's request (sec. 150) prepare memorandum of meeting.
Percent applications affected: 50%
Time: 4 hrs Net Effect: 4 x 0.5 = 2.0 hr
- o Prepare formal agency decision with findings, conclusions in support of decision; a detailed justification of decision process (sec. 160)
Percent applications affected: (140/340) 0.40%
Time: 15 hrs Net Effect: 15 x 0.4 = 6.0 hr
- o Consider requests for stay of agency decision pending appeal, serve request on everyone, rule on request within 10 days after other parties have served responsive memorandum (sec. 630).
Percent applications affected: (140/340) x 0.50 = 20%
Time: 4 hrs Net Effect: 4 x 0.20 = 0.8 hr.
- o Within 10 days after appeal filed, decide whether to hear appeal (sec. 640).
Percent applications affected: 20%
Time: 2 hr Net Effect: 2 x 0.2 = 0.4 hr.
- o If Class B hearing request granted, publish notice within permit area, serve notice on everyone who received 1st, agency decision, receive petitions for intervention and objections to intervention petitions, decide whether to grant intervention petition w/in 10 days (sec. 640).
Percent applications affected: 5%
Time: 8 hrs Net Effect: 8 x 0.05 = 0.4 hr
- o Make summary decision in some cases on Class A brief, may serve notice further brief required (sec. 710)
Percent applications affected: 5%
Time: 1 hr Net Effect: 1 x 0.05 = NIL
- o Oral hearing after second Class A brief, serve decision on parties
Percent applications affected: 5%
Time 2 hrs Net Effect: 2 x 0.05 = 0.1 hr

TOTAL WEIGHTED - AVERAGE PROCESSING
TIME INCREASE PER APPLICATION

16.5 hours

IV. CALCULATION OF PERSONNEL REQUIREMENTS

Expected application load in 1981: 390-460

Increased permit time per application: 16.5 hours

1981 increased workload: 6435 - 7590 hours
3.7 - 4.34 people

Net Requirement: 4 people

- 1 Clerk-Typist
- 1 CZM (MA II)
- 1 DPC III
- 1 LMT I

The above request for four people is in addition to those currently assigned to the permit process at DMEM (see attached organization chart). Tasks which the Uniform Permit Procedures require similar to those already being performed at DMEM are listed below.

- o Carry out interagency review
- o Review applicant's written response to other agencies' written comments.
- o Keep record file on application.
- o For disposal within coastal zone, ask for comments on consistency issue in both .305 and .345 notice.
- o Prepare informal brief for Commissioner in event of appeal of decision.

Given the number of deadlines in the proposed regulations, it is obvious we would receive benefit from developing a computer monitoring process of the applications. I have not included a request here for these funds since I am not sure to what extent ALARS could help with this, or indeed, what the final regulations will require. I would not expect the amount to be extraordinarily large, however.

Please let me know if you need further information.

Attachments

cc: David Rogers - two copies
Mary Halloran
Kay Brown
Bill Van Dyke
Laurel Murphy
Mary Kaye Hession

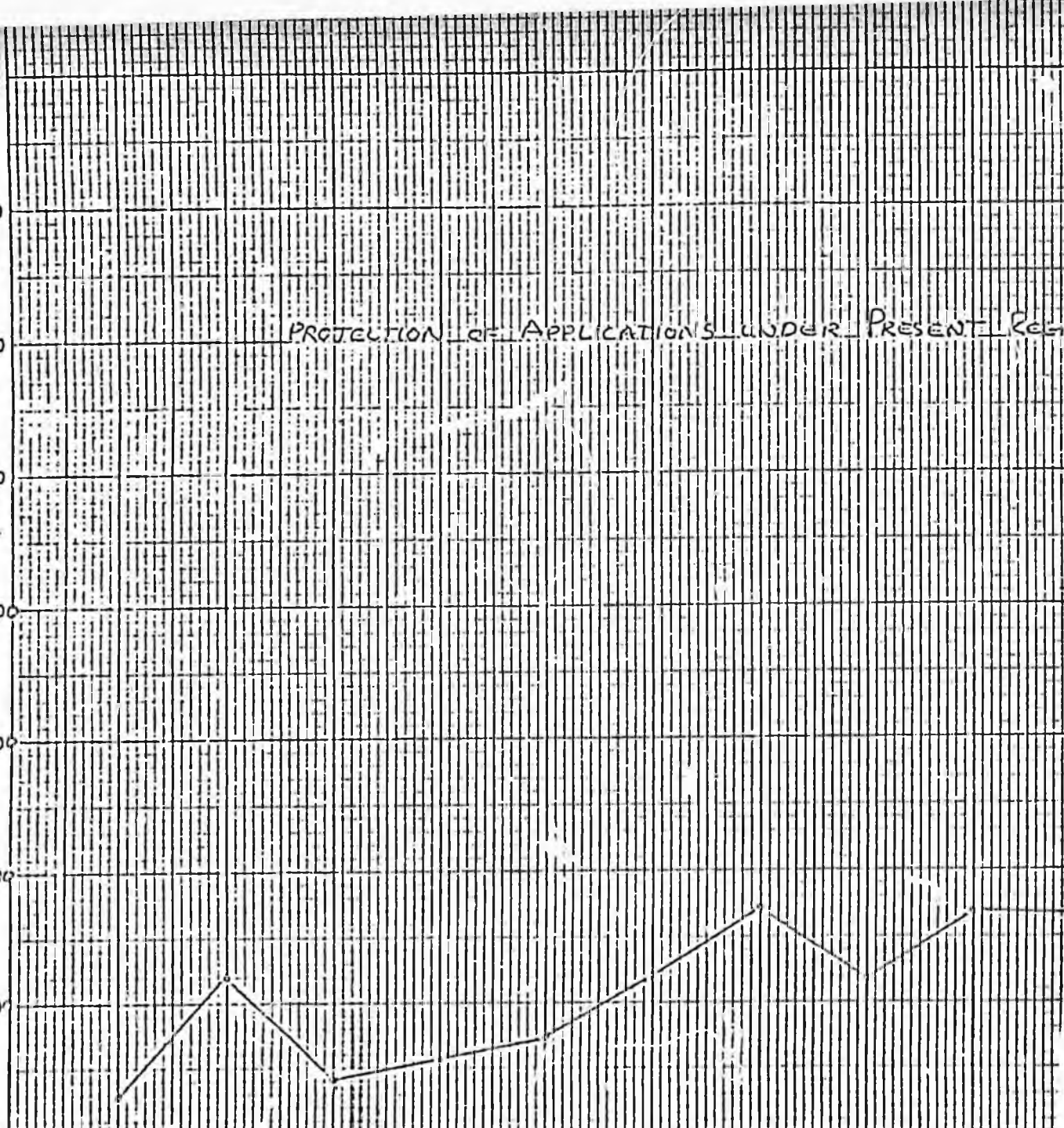
GH/mab

APPLICATIONS RECEIVED AT DMEM

80
70
60
50
40
30
20
10
0

PROTECTION OF APPLICATIONS UNDER PRESENT REGUL

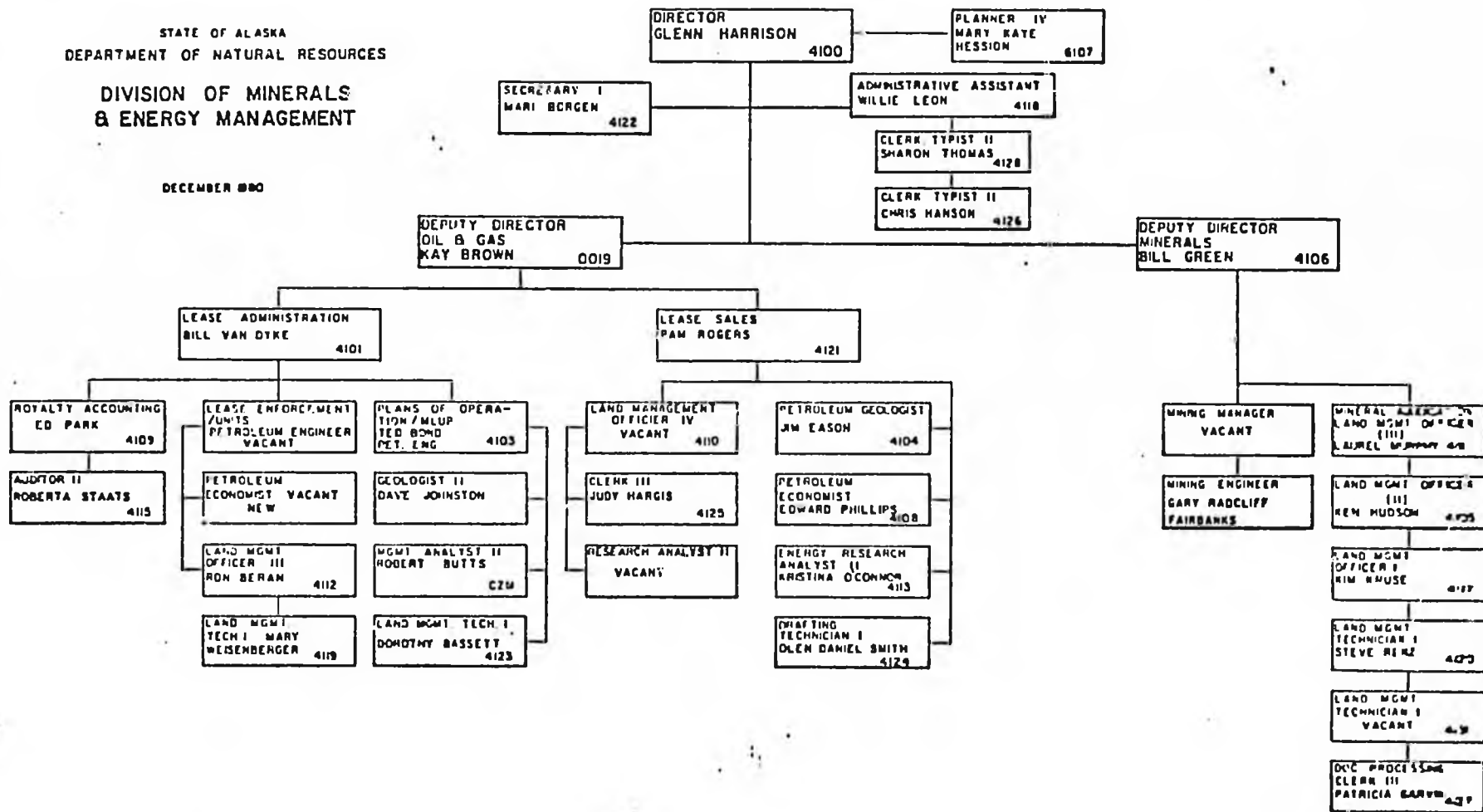
19.69	19.70	19.71	19.72	19.73	19.74	19.75	19.76	19.77	19.78
Mar	Mar	Mar	Mar	Mar	Mar	Mar	Mar	Mar	Mar
June	June	June	June	June	June	June	June	June	June
Sept	Sept	Sept	Sept	Sept	Sept	Sept	Sept	Sept	Sept
Dec	Dec	Dec	Dec	Dec	Dec	Dec	Dec	Dec	Dec



STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES

DIVISION OF MINERALS
& ENERGY MANAGEMENT

DECEMBER 1990



REGULATORY REFORM

The Alaska State Chamber supports regulatory reform legislation which will generate consistent, non-duplicative regulations and processes for issuance of state permits which will create a clearly defined method of permit procedure and which will encourage and help the business climate within the state of Alaska.

The Alaska State Chamber believes that unless the state government assumes the role of cooperation and support rather than simply regulation and policing, we will not have a climate that will encourage establishment of new industry or economic viability for industries already operating in the state.

- 1) *McConby reports - 1977*
- 2) *Le Peseck letter of April 2, '80*

- 3) *Fran Ulmer letter*
- 4) *Hammond letter Aug 10, '80*
- 5) *AODA-report Dec. 31, 1980*

JANUARY 26, 1982 COMPROMISE PROPOSAL FOR HCS CSSB-84 (LABOR AND COMMERCE)

Need fiscal note from DNR - Mary Holleran
See A.S. - no tillage

Section 1. FINDINGS. The legislature finds that

- 6) *Hammond letter Jan 27, 1981*
- 7) *May 15, 1981 - Gilbert letter*
- 8) *Fuller letter - Rec. & review - 5/1/81*
- 9) *AODA letter 5/29/81 to Fuller*
- 10) *AODA letter 6/14, 81 to Fuller*
- 11) *J. Reinwand - 6/22/1981 - to London.*
- 12) *Bill that pass - Senate SB-84 -*
- 13) *Bill 6/22/81 -*
- 14) *Bill of 6/23/81*
- 15) *Analysis of Jan 26, 82 CS for SB84*

(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;

Schedule for Fri. - Feb 15

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

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

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

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

*Leave Sec. 2 out
as separate adn.*

* Section 2. AS 44.62.330(a) is hereby amended as follows:

(a) Except as provided in Article 8A of this Chapter, the [The] procedure of the State Boards, Commissions, and Officers listed in this Subsection or their successors by reorganization under the constitution shall be conducted under AS 44.62.330 - 44.62.630. This procedure, including, but not limited to, accusations and statements of issues, service, notice and time and place of hearing, subpoenas, depositions, matters concerning evidence and decisions, conduct of hearing, judicial review and scope of judicial review, continuances, reconsideration, reinstatement or reduction of penalty, contempt, mail vote, oaths, impartiality, and similar matters shall be governed by AS 44.62.010 - 44.62.650, notwithstanding similar provisions in the statutes dealing with the state boards, commissions, and officers listed. Where indicated, the procedure that shall be conducted under AS 44.62.330 - 44.62.630 is limited to named functions of the agency.

(1) Repealed by § 5 ch 159 SLA 1980.

(2) Board of Chiropractic Examiners

(3) Board of Dental Examiners

(4) State Board of Registration for Architects,
Engineers and Land Surveyors

(5) Repealed by § 13 ch 218 SLA 1976.

(6) Board of Examiners in Optometry.

(7) Repealed by § 5 ch 159 SLA 1980.

- (8) State Medical Board
- (9) Division of Lands under Alaska Land Act where applicable
- (10) Board of Nursing
- (11) Board of Pharmacy
- (12) Board of Public Accountancy
- (13) Department of Labor as to functions relating to employment security only as provided in (c) of this section
- (14) Real Estate Commission
- (15) Alaska Workers' Compensation Board, where procedures are not otherwise expressly provided by the Alaska Workers' Compensation Act
- (16) Department of Transportation and Public Facilities, as to functions relating to aeronautics and communications
- (17) Repealed by § 12 ch 131 SLA 1980.
- (18) Repealed by § 49 ch 94 SLA 1980.
- (19) Repealed by § 54 ch 169 SLA 1978.
- (20) Department of Revenue, under Cigarette Tax Act
- (21) Repealed by § 54 ch 169 SLA 1978.
- (22) Repealed by § 11 ch 181 SLA 1976.
- (23) Department of Public Safety, as to suspension or revocation of a security guard's license under AS 18.65.400 - 18.65.490
- (24) Department of Health and Social Services, under AS 47.35.010 - 47.35.080, relating to boarding and foster homes for children

(26) Repealed by § 4 ch 120 SLA 1971.

(27) Department of Health and Social Services and Department of Environmental Conservation under Alaska Food, Drug, and Cosmetic Act (AS 17.20.010 - 17.20.380) and Department of Health and Social Services in connection with the licensing of embalmers under AS 08.44.010

(28) Department of Health and Social Services and the Hospital Advisory Council, under AS 18.20.010 - 18.20.130

(29) Repealed by § 4 ch 120 SLA 1971.

(30) Department of Environmental Conservation, under AS 18.30.010 - 18.35.090, concerning the regulation of tourist and trailer camps, motor courts, and motels

(31) Repealed by § 40 ch 206 SLA 1975.

(32) Repealed by § 4 ch 106 SLA 1970.

(33) Board of Marine Pilots

(34) Alaska Police Standards Council

(35) Guide Licensing and Control Board

(36) Board of Dispensing Opticians

(37) Repealed by § 20 ch 110 SLA 1981.

(38) Expired.

(39) Alaska Public Offices Commission

(40) Board of Fisheries

(41) Board of Game

(42) the Department of Education and the Professional

Teaching Practices Commission with regard to proceedings to revoke or suspend a teacher's certificate under AS 14.20.030 - 14.20.040 and AS 14.20.470(a)(4)

(43) Alaska Commission on Postsecondary Education under AS 14.48.010 - 14.48.210 as to denial of applications and revocation of authorizations and permits.

(44) Department of Environmental Conservation, except to the extent that AS 44.62.360 - 44.62.400 are inconsistent with the manner in which proceedings are initiated under the provisions of AS 46.03.010 - 46.03.900

(45) University of Alaska, except to the extent that its inclusion is inconsistent with the provisions of AS 14.40.010 - 14.40.960

(46) Department of Commerce and Economic Development concerning the fisheries enhancement loan program (AS 16.10.500 - 16.10.620)

(47) Board of Psychologist and Psychological Associate Examiners (AS 08.86.010)

(48) the Department of Fish and Game as to functions relating to the protection of fish and game under AS 16.05.870

(49) Board of Veterinary Examiners (AS 08.98.010)

(50) Board of Nursing Home Administrators (AS 08.70.010)

(51) Board of Barbers and Hairdressers (AS 08.13.010).

* Sec. 3. AS 44.62 is amended by adding new sections to read:

ARTICLE 8A. PERMIT PROCESSING.

[Sec. 44.32.632.] PERMIT CLASSIFICATION. (a) Each state resource agency shall by regulation classify each of the permits issued by that agency within one of the two following categories:

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

(2) class II permits, for which, because of a necessary public notice or interagency review period, a final decision cannot be issued within 30 days. A final decision on a class II permit must be issued within 45 days after the date of receipt of a completed permit application.

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

Sec. 44.62.633. OTHER REGULATORY REQUIREMENTS FOR
PERMIT PROCESSING.

(a) Upon a finding by the head of a resource agency that a permit being considered involves unusually complex issues so that the agency cannot render a final decision within the time period specified in AS 44.62.632(a), the head of the agency may prescribe a time period within which the final decision will be made. The finding of the head of the agency may be appealed by the applicant to the superior court under the Appellate Rules of Procedure. In no event may the time period be extended more than 120 days beyond the time period specified in AS 44.62.632(a).

(b) The time period specified in AS 44.62.632(a) may be extended if necessary to facilitate joint processing of a permit application through memoranda of understanding between state and federal agencies, but only if strict adherence to the time periods established in AS 44.62.632(a) would pose an irreconcilable conflict with a federal statute or regulation.

(c) Subject to (a) and (b) of this section and AS 44.62.634, failure of a resource agency to make a final decision within 30 days after the receipt of a completed permit application for a class I permit, or within 65 days after the receipt of a completed permit application for a class II permit, constitutes approval of the application. In an

appeal of a permit issued by operation of this subsection, the record shall be construed in a light most favorable to the applicant, and the permit shall be accorded a presumption of regularity.

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

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

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

(c) If a timely request under subsections (a) and (b) of this section is made, the time period specified in AS 44.62.632 is suspended from the date of request to the date of full compliance with the request. Subsequent requests for additional information may be made, but must relate only to new issues raised by the response to the initial notification. Subsequent requests shall not extend the time periods specified in AS 44.62.632.

(d) Nothing in this section shall be construed as granting any resource agency the authority to request information beyond the authority given to it by other statutory provisions.

Section 44.62.635. LEAD AGENCY. (a) [For each class of activity permitted in the state] there is established a lead agency which is solely responsible for ^{MAKING} ~~issuing~~ coastal management consistency determinations under AS 46.40 and for preparing and submitting state comments on federal permit applications. The lead agency shall be that resource agency having principal responsibility for authorizing the overall activity, including instances where an activity requires permits from more than one resource agency. For classes of activities for which no agency with principal responsibility exists the governor shall designate a resource agency to be a

Preferred

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

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

The lead agency shall then

balance competing factors in reaching its final decision.

No resource agency other than the lead agency has primary expertise in the balancing of competing factors.

balance competing factors in reaching its final decision.

No resource agency other than the lead agency has primary expertise in the balancing of competing factors.

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

(d) An agency's completion of a review under § 401 of ^{Corp of Engineers} the Clean Water Act (33 USC § 1341) does not constitute that agency as a lead agency hereunder.

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

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

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

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

(a)

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

Sec. 44.62.633. REVIEW BY THE SUPERIOR COURT. (a) Judicial review by the superior court of a final decision issued pursuant to Article 8A of this chapter may be had by filing a notice of appeal in the superior court in accordance with the applicable rules of appellate procedure. The right to appeal is not affected by the failure to seek further review pursuant to AS 44.62.637. The review shall be governed by the provisions of AS 44.62.560(b) - (e) and AS 44.62.570.

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

* Sec. 4. AS 44.62.640 is amended by adding a new subsection to read:

(c) As used in AS 44.62.632 - 44.62.635,

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

(2) "permit" means a permit, license, certification, consistency determination, or other authorization or approval issued by a resource agency as a written document that is required to be obtained or is solicited from a state agency before the construction or operation of a project; "permit" does not include the approval of a unit agreement, a unit development plan, or a unit exploration plan, or conveyances of interest in state land or water, but does include all authorizations and approvals, whether proprietary or regulatory, necessary to undertake a project under a previously conveyed property interest;

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

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

delete
5
~~46.40~~ (5) "substantive consideration" means that, (where documented factual statements or data are submitted by a resource agency or a coastal resource district, those statements or data shall be deemed true unless the lead agency or permit applicant refutes such statements or data by a preponderance of the evidence.)

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

May we have your written testimony?

Problems

Ray Gilbratt -

2) Too Duplication

3) Interlocking well.

4) Employee attitudes and policies

5) Many small problems make big problems

* Mr. Jay Nelson
Oppose to Bill -

* Have you been in the area previously? *
Have you seen the proposed reg.
Adm. bill

Dave Allison - Ab. Environmental
threat to stop everything.

Were you in negotiation of the draft -
'legislatively' accept.

Mollie Dent -
need copy -

Joyce Munson

Personnel Council - permit procedures
Strongly against uniform ^{permit} ~~local~~ revision →

Teleconference

Larry Edwards
Sitka.

favors administrative procedures -
Jim Clark. -

S

B

1

3

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Introduced 5-8-82

Date Rec'd 5-12-82

Referrals - Transportation Finance

Comm. Hearing 5-14-82 - 5-15-82 CS Wed. ~~at~~ 10:50 A.M.

• Action 5-15-82 - Sent to Terry Quinn & Chief Clerk.

F/N herein

Prime Sponsor Bennett

Notified -

But Ward - Comm. Transp.

Keith Miller called to inform him of hearing
he should have Larry Metchum come if
possible. Mr Metchum will call as to when he
can get here. He will be in attendance
Friday and if necessary will stay over.

CHARLIE PARR

ALASKA LEGISLATURE

S.R. Box 50599
Fairbanks, Alaska 99701
(907) 456-5029

Pouch V
Juneau, Alaska 99811
(907) 465-4907

May 7, 1982

To: Members of the House

From: Senator Charles Parr

Regarding: CS SB 135 (Rules)

All members of the House and the Senate recently received a form letter distributed by a transportation common carrier regarding SB 135 (legislation which deals with transportation subcontractors commonly known as "Owner-Operators"). Due to the importance of this bill I would like to clear up some misconceptions which may have been created by the information provided by the carrier.

The gravest inaccuracy is the obvious attempt to paint this issue as a union dispute. It has been clearly demonstrated in two Senate committee hearings that this is not the case. The owner operator is stuck between the union and the carrier. On the one hand, the owner operator under law must only work for a common or contract carrier and under a contract which has terms that are generally set by the carrier, on the other hand, in order to work for some carriers the operator must join the union.

Under Alaska Transportation Commission regulations, the carrier is allowed to deduct the employee wages and benefits as well as any truck expenses from the revenues paid to the owner operator for the leased vehicle. This means that the owner operator pays his own wage and benefit and union contributions as well as the employers contributions through deductions in the lease revenues. Any economic benefits that the union, if it is a union shop, negotiates for the employee are just further expenses to the owner operator which are backed off the revenues which are received for the lease of the vehicle.

It makes no sense for a owner operator to strike for the type of benefits which the union could provide, i.e., related to wages and benefits, because that money comes out of the truck revenues, revenues which are under a contract which the union plays no part in securing, a contract which is specifically and only between the carrier and the operator, and which provides the finances which allow the operator to pay vehicle expenses and living expenses.

The concern of the owner operators is that while carriers such as the one which distributed the letter in question are

posting record profits as the result of a highly protected industry, that numerous Alaskan owner operators who do not enjoy the same protection under the law are going out of business because they can no longer afford to operate their rigs at the level of revenues being offered by the carriers.

The carriers are cutting their tariffs (or not adjusting them to reflect the effects of inflation) but still maintaining the same or higher profits, while it is the owner operator, whom is unrecognized by ATC, that is receiving less and less revenue for the vehicle lease and is required to pick up more of the costs and risks related to the transportation of goods over Alaska's highways.

The result is that today, unlike the era prior to the pipeline, common carriers own few if any of their own vehicles, thus eliminating all risk related to maintaining or operating trucks, and that responsibility has been transferred to the owner operator. The carrier has an opportunity to work essentially as a broker, a broker who is in a monopolistic industry where the owner operators have to work for the carrier and where the carrier need not fear the entrance of other carriers into the market due to ATC protection.

The operators, under CS SB 135(rules) are provided a measure of protection, not the protection afforded the carriers, but the minimum protection which will allow competition to flourish within the Alaskan Economy.

CHARLIE PARR

ALASKA LEGISLATURE

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CS SB 135 (Rules)

CS SB 135 (Rules) provides a measure of equal protection to a class of transportation operators not envisioned when the Alaska Motor Freight Carrier Act was developed. It is less protection than afforded the current class of carriers, but the minimum which will allow competition and fair trade to grow in this sector of the Alaskan Economy.

The primary reason for this legislation is the economic survival of the group providing more than 90% of Alaska's transportation services - the transportation subcontractor (commonly known the "owner operator").

At issue here is the question of minimum standards which will insure that transportation subcontractors receive reasonable consideration for the service and the equipment provided which is necessary to properly serve public needs in the Alaskan environment and economy.

If these people who provide necessary transportation services can not be assured of a certain minimum rate of return on their efforts, there is a danger that no one will provide the type of "adequate, complete, dependable and stable transportation in all its phases", as is assured the public under AS 42.10, the Alaska Motor Freight Carrier Act.

The bill provides the Alaska Transportation Commission with authority to:

- regulate at one level lower than it now does.
- provide licenses to those who are currently transportation subcontractors or who have operated in Alaska since 1976.
- apply standards of public convenience and necessity to the issuance of further licenses.
- provide for minimum and maximum rates

The licensing, grandfather, and rate provisions are modeled after the Alaskan system for common carriers and is a standard approach for a category of public utilities (the grouping in which transportation falls).

RULES CS for SB 135

Changes from Finance CS:

- Section 3 deleted. This section would have changed the definition of a "private carrier" by deleting language referring to lessee and bailee (which is how it presently reads in the statutes.) Therefore, the statutes remain the same regarding "private carriers." This change was agreed in the Rules Committee hearing.
 - p. 1 line 19 "...construction contractor operator..." is deleted. This change was agreed in the Rules Committee hearing.
 - grandfather clause added. This clause would be the basis for issuing owner/operator (transportation subcontractor) permits. (Section 1 (f)) This change was discussed in the Rules Committee hearing.
 - owner/operator language deleted. "transportation subcontractor" added. As SB 135 (Finance) reads, an owner/operator is a trucker that owns one truck. In fact, many truckers own more than one truck, but they are not by definition "carriers." What the term "transportation subcontractor" does is more accurately describe truckers that own more than one truck than the term currently used in SB 135 (Finance). This change in terminology is very important because of the permit system that SB 135 would create.
- The language in the Rules CS read: TRANSPORTATION SUBCONTRACTOR, a person who rents, leases, or otherwise provides a motor vehicle for the use of common or contract carriers in transporting property and who provides or arranges for, directly or indirectly, a driver or operator for the vehicle but does not include taxicabs. This is new language. Need for it arose out of problems with owner/operator terminology in the application of SB 135.
- immediate effective date (Sec. 4) plus time frame ATC shall adopt regulations (Sec. 3) will mean as swift an implementation of the permit system as is possible by law and the ATC regs.
 - Permit system, permit each vehicle, not each driver (SB 135 will institute a system similar to issuing license plates as opposed to driver's license.) Nontransferable permits will be issued to each truck so that the number of trucks in use will be constant. This creates a limited entry type situation for the trucking industry. The scenario would be something like this: Under the grandfather clause, a person operating a truck in Alaska between 1976 and the effective date of SB 135 would receive, upon application, a transportation subcontractor permit. This permit would be issued to each truck of the person that is eligible under the grandfather clause. If a trucker wrecks his truck and buys a new one,

the permit will be transferred to the new truck. If the trucker suffers economic or physical hardship or death, the permit can be transferred to a spouse, or a person designated by the owner. Cases of transferability will be specifically spelled out in the ATC regulations. This is necessary to prevent locking up the market, where permits might possibly be sold and also have the affect of inflating the cost of a truck. Nontransferable permits allow fair access to future groups. ---

An annual permit system would be instituted. This would mean a yearly review of already existing permits to assure that permits issued are not for dormant trucks.

Regularly, the ATC will review the transportation needs of the state, and based on their review will decide if "public convenience and necessity" dictates that more permits be issued. When ATC does decide that more permits will be issued, anyone who is a transportation subcontractor will be eligible. At this point the grandfather clause will no longer be applicable.

Historical, grandfather clauses have proved to be constitutionally unsound. SB 135's grandfather clause makes no reference to Alaska residency so that it is constitutionally sound and will stand if challenged in a court of law. Also, the provision that it can be used only upon the inception of the ATC transportation contractor permit system and is then open to all, affords every citizen due process and prevents people like the Zobels from having a picnic with SB 135.



ATOOCA

601 Hughes, Fairbanks, Alaska 99701
Phone (907) 452-5814 or (907) 452-5841

April 12, 1982

Senator Charles Parr
Chairman Senate Health, Education & Social Services Committee
State Capitol
Pouch 5
Juneau, AK 99811

Dear Senator Parr:

I am writing in regards to the Transportation Subcontractor Proposal presented to you by the Women for Alaskan Owner/Operators Committee. I have examined the entire proposal as well as the supporting documents and agree with nearly every detail. The Owner-Operator portion of the Alaskan transportation industry is in a crisis situation the results of which will have far reaching effects into the Alaskan economy. To understand the situation you need to know how this developed.

Prior to the pipeline days there were very few Owner-Operators in Alaska. Quite to the contrary 90 percent of the freight moving then was moved by carriers utilizing company owned equipment driven by employees of that carrier. As the pipeline project began to unfold these carriers increased the size of their fleets dramatically to accommodate the tremendous tonnages of freight to be moved. The rates were good and new or dormant carriers developed to fill the demand. Soon equipment became harder and harder to come by and the carriers began utilizing Owner-Operators to fill this need.

All went well during this period as the rates were adequate and the equipment leases and payments were liveable.

In the period following the peak of the pipeline project more and more competition developed over the decreasing demand (a natural thing) for transportation. The carriers began filing lower and lower tariff rates in order to get the work. As the rates declined companies with large numbers of company owned trucks found it not profitable to operate and began turning more and more to Owner-Operators. Many companies sold their trucks directly to the employees driving for them. There were many advantages in leasing from Owner-Operators, not the least of which, was that the company no longer had the overhead of shops, mechanics, or any of the repair responsibilities. The legal responsibility to insure equipment remained up to state and federal agency standards was and is still the carriers

responsibility. The cost of that standard however, is borne by the Owner-Operator including any fines related to this. In some cases, even the public liability and cargo insurances required by law of the carrier are prorated and subtracted from the amounts paid on the leases.

Still during the demobilization period of the pipeline amounts received by Owner-Operators were adequate to maintain and operate the equipment. Then in 1979, under pressure by the carriers and over the objections of the Owner-Operators, the ATC revised the leasing regulations under 3AAC 64.070. This allowed the costs of the driver to be legally deducted from the lease revenues earned by the Owner-Operator. By so doing the carrier was further relieved from the expense of employees including, but not limited to wages, fringe benefits, the employers contributions for; social security, unemployment, and workmens compensation payments. Even then in 1979 the received amounts for the Owner-Operator were tolerable though very close to intolerable. Now came the inevitable.

Too many carriers, too little work. The carriers, protected by favorable laws and protected by leases that gave them impenetrable protection for their profits entered into cutthroat competition totally insulated from any losses. Certainly not all carriers were or are of this mind but faced with loss of business the alternatives were to get out of business or follow suit. Most followed suit. The Owner-Operator having no voice over the tariff rates and no voice in the price paid for his services reached the point of not enough money to maintain his equipment, his home and family.

Facing the inevitable loss of their equipment and or bankruptcy many Alaskan Owner-Operators withdrew their equipment asking for better leasing arrangements. Some reached agreements and were able to continue operating. Others were told either take what your getting or we will replace you.

Some companies based outside Alaska recognized the desperate economic conditions there and began an active recruiting effort in the lower 48, advertising a need for Owner-Operators in Alaska. The rates stated looked unbelievable to Owner-Operators there who have little or no understanding of the cost of operating in Alaska. Over the last six months literally hundreds of these Owner-Operators have come to Alaska as direct replacements for Alaskan Owner-Operators. Alaskans' equipment is sitting idle, unable to compete against outsiders who have no families here, no homes and no investment in Alaska. Their equipment is ill-equipped for Alaskan operating conditions yet carriers lease their equipment send them on the road overloaded and inexperienced. Much of the type of equipment now in use was previously refused for use by the carrier because it failed to meet their standards.

Senator Charles Parr

April 12, 1982

Page 3

The Alaskan Owner-Operator is not asking for subsidies or hand outs. What Alaskan Owner-Operators are asking for is to be allowed to function and compete in Alaska's own economy. It would be hard to argue that Alaska doesn't have it's own distinct economy. Alaska has always been plagued by the flow of dollars out of our economy. Many Alaska businesses will be hurt if the present trend continues.

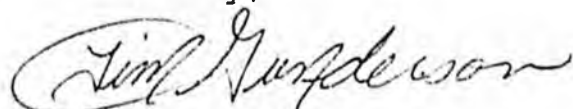
Alaskan Owner-Operators are a clearly identifiable industry of small businessmen who have proved their efficiency by the fact that approximately 90 percent of all freight moved by truck in Alaska is moved by an Owner-Operator. There are many similarities to the Alaska fisherman. Limited entry has helped Alaskan fishermen and Alaskan Owner-Operators need similar laws to allow this industry to function for Alaskans.

The Transportation Subcontractor Proposal is an excellent beginning for allowing this industry to function and to reach stability in these very unstable times. It is essential that this be brought before the legislature before this session ends. By next January the damage to these Alaskan small businessmen will be irreparable. Many have already filed bankruptcy or are facing the loss of their equipment and personal possessions.

I urge you to bring the Transportation Subcontractor Proposal forward, to examine it closely, and pass it before this session ends.

The Alaskan Owner-Operator has earned and deserves your immediate attention to this industry of small businessmen. Please do not delay!

Sincerely,



Tim Gunderson
President

gs/TG

I will help in anyway I can.

