

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990  
6458 SENATE RESOURCES

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but will take the crude oil delivered or offered, without unreasonable discrimination, that the Alaska Pipeline Commission shall, after a full hearing with due notice to the interested parties and a proper finding of facts, determine to be reasonable in the performance of its duties as a common carrier.

5. Interchange of Oil

Lessees agree to interchange crude oil with each like common carrier and provide connections and facilities for the interchange of crude oil at every locality reached by both pipelines when the necessity exists, subject to rates and regulations made by the appropriate State or federal regulatory agency.

6. Books, Accounts and Records; Access to Property and Records

a. Each Lessee shall maintain and preserve books, accounts and records and make those reports that the State may prescribe by regulation or law as necessary and appropriate for the purposes of administering AS 38.35. Each Lessee shall accord at all reasonable times to the State and its authorized agents and auditors the right of access to its property and records, of inspection of its property, and of examination and copying of such records.

b. Each Lessee agrees that it shall submit to the Commissioner or the Pipeline Coordinator, on request, any information or documents or other materials which are submitted to the Secretary of the Interior or to the Authorized Officer under the Agreement and Grant of Right-of-Way for the Trans-Alaska Pipeline between the United States and the Lessees and which are relevant to the enforcement of the rights of the State under this Lease.

7. Connections for Delivery

Lessees shall provide connections, as determined by the Alaska Pipeline Commission, under AS 42.06.340, to facilities on the Pipeline subject to the Lease, both on State Land and on other land in the State, for the purpose of delivering crude oil to persons (including the State and its political subdivisions) contracting for the purchase at wholesale of crude oil transported by the Pipeline when required by the public interest.

8. Connections for State-Owned Oil

Lessees shall, notwithstanding any other provisions, provide connections and interchange facilities at State expense at such places the State considers necessary, if the State determines to take a portion of its royalty or taxes in oil.

9. Compliance with State Laws and with Regulations and orders of the Alaska Pipeline Commission

Lessees shall construct and operate the Pipeline in accordance with applicable State laws and lawful regulations and orders of the Alaska Pipeline Commission.

10. Damage or Destruction of Leasehold or Other Property

Lessees shall, at their own expense, during the term of this Lease:

- a. Maintain the leasehold and Pipeline in good repair;
- b. Promptly repair or remedy any damage to the leasehold; and
- c. Promptly compensate for any damage to or destruction of property for which the Lessees are liable resulting from damage to or destruction of the leasehold or Pipeline.

11. Transfer, Assignment, or other Disposition

a. Lessees shall not transfer, assign, or dispose of in any manner, directly or indirectly, or by transfer of control of the carrier corporation, their interest in this Lease, any rights under this Lease or the Pipeline subject to this Lease to any person other than another Owner of the Pipeline (including Subsidiaries, Parents and Affiliates of the Owners), except to the extent that the Commissioner, after consideration of the protection of the public interest (including whether the proposed transferee is fit, willing and able to perform the transportation or other acts proposed in a manner that will reasonably protect the lives, property and general welfare of the people of Alaska), authorizes. The Commissioner shall not unreasonably withhold his consent to the transfer, assignment or disposal.

b. A Lessee transferring in whole or in part its right, title and interest in the Right-of-Way and this Lease shall be released from its liabilities and obligations (accrued, contingent or otherwise) to the State under this Lease to the extent and limit that the transferee assumes unconditionally the performance and observance of each such liability and obligation; provided, that if such transferee is any person other than another Owner of the Pipeline, a Lessee and/or its guarantor or guarantors shall be released from its and/or their liabilities and obligations to the State under this Lease to the extent and limit assumed by the transferee in a transfer authorized by the Commissioner under Subsection "a" of this section.

12. Appointment of Agent for Service of Process

Lessees shall file with the Commissioner a written appointment of a named permanent resident of the State to be their registered agent in the State and to receive service of notices, regulations, decisions and orders of the Commissioner; if any Lessee fails to appoint an agent for service, service may be made upon that Lessee by posting a copy in the office of the Commissioner and filing a copy of it in the office of the Lieutenant Governor and by mailing a copy to the Lessee's last known address.

13. Indemnification of the State; Liabilities or Damages Arising where there is Concurrent Use

a. Lessees shall be liable to the State for liabilities, damages or injury incurred by the State caused by the construction, operation or maintenance of the Pipeline, and they shall indemnify the State for these liabilities, damages or injuries.

b. The party at fault shall be liable under the provisions of Article VIII, Section 8, of the Alaska Constitution for the payment of damages for injury arising from noncompliance with all terms and conditions governing concurrent use.

14. Liability and Property Damage Insurance, Security, Undertaking or Guaranty

a. Any lessee shall procure and furnish liability and property damage insurance from a company licensed to do business in the State, or furnish other security or undertaking upon the terms and conditions the Commissioner considers necessary if the Commissioner finds that the net assets of that Lessee are insufficient to protect the public from damage for which such Lessee may be liable arising out of the construction or operation of the Pipeline.

b. (i) If the Commissioner finds that the net assets of any of the Lessees are insufficient to protect the public from damage for which any of the Lessees may be liable arising out of the construction or operation of the Pipeline, the Commissioner may require such Lessee to deliver to the Commissioner a valid and unconditional guaranty of the full and timely payment of all liabilities and obligations of the Lessee to the State under or in connection with this Lease.

(ii) It is recognized that a proposed guarantor of a Lessee may be a corporation (or an individual stockholder thereof), a partnership (or an individual partner thereof), an association that is authorized and empowered to sue and be sued and to hold the title to property in its own name (or an

individual associate thereof), a joint stock company that is authorized and empowered to sue and be sued and to hold the title to property in its own name (or any individual participant therein), or a business trust (or any individual settlor thereof), and may or may not directly or indirectly own a legal or beneficial interest in the Lessee whose liabilities and obligations are sought to be guaranteed. In the case of multiple guarantors that are acceptable to the Commissioner, each shall be severally liable for only its proportionate share of any sum or payment covered by the guaranty.

(iii) Each guaranty shall be satisfactory to the Commissioner in all respects including, without limitation, the form and substance of the guaranty, the financial capability of a proposed guarantor, the availability of such guarantor to service of process, the availability of the assets of such guarantor with respect to the enforcement of judgments against the guarantor, and the number of guarantors that will be necessary to guarantee all of the liabilities and obligations which will be covered by a particular guaranty; provided, however, that the Commissioner shall not unreasonably withhold his approval with respect to a guaranty or guarantor.

(iv) The Commissioner shall have the right at any time, and from time to time, to require the substitution and delivery of a new form of guaranty in the event either that an outstanding guaranty is held to be invalid or unenforceable, in whole or in part, by a court of competent jurisdiction or that the controlling law is, by statute or judicial decision, so altered as to impair, prevent or nullify the enforcement or exercise of any right or option of the State under an outstanding guaranty; provided, however, that the outstanding guaranty (to the extent of its validity or enforceability, if any) shall continue in full force and effect with respect to any claim, suit, accrued liability or defense thereunder that exists at the time of substitution; provided, further, that the new form of guaranty, in each such case, shall be required as to all Lessees that at the time of substitution have delivered, or are required to deliver, a guaranty.

(v) Each guaranty shall be accompanied by such certificates and opinions of legal counsel as the Commissioner may require to establish its validity. The guaranty shall include an appointment of an agent for service of process that is satisfactory to the Commissioner.

15. Lands Condemned under AS 38.35.130

Any interest in land acquired under the provisions of AS 38.35.130 for the Pipeline will become part of the land leased to the Lessees under this Lease and the costs for the acquisition thereof shall be borne by the Lessees.

16. Construction Plans and Quality Assurance

a. Lessees shall submit construction (including design) plans, a quality assurance program, and other related documents as required by the Pipeline Coordinator for review and approval prior to the issuing of Notices to Proceed.

b. The quality assurance program shall be comprehensive and designed to assure that the environmental and technical stipulations in this Lease will be fully complied with throughout all phases of construction, operation, maintenance and termination of the Pipeline.

c. The following criteria shall be included in the quality assurance program, although Lessees are not limited to these criteria:

- (i) Provide practicable and appropriate means and procedures, including contingency plans approved by the Pipeline Coordinator, for the prevention, detection and prompt abatement of any actual or potential condition that is susceptible to prevention or abatement by Lessees which arises out of, or could affect adversely, the construction, operation, maintenance or termination of all or any part of the Pipeline and which at any time may cause or threaten to cause (A) a hazard to the safety of workers or to public health or safety (including but not limited to personal injury or loss of life with respect to any Person or Persons) or (B) significant harm or damage to the environment (including but not limited to public or private property, whether real, personal or mixed, or areas of vegetation or timber, fish or other wildlife populations or their habitats, water quality, air quality or any other natural resource).
- (ii) Provide practicable and appropriate means and procedures, including contingency plans approved by the Pipeline Coordinator, for the repair and replacement of substantially damaged tangible property and the rehabilitation of substantially damaged natural resources (including but not limited to revegetation, restocking fish or other wildlife populations and reestablishing their habitats, and restoring air and water quality) if the cause of the damage arises in connection with, or results from, the construction, operation, maintenance or termination of all or any part of the Pipeline.

- (iii) Provide for practicable and appropriate component and systems quality through quality control management and planning, and inspection and test procedures approved by the Pipeline Coordinator.
- (iv) Assure that the selection of Lessees' contractors, subcontractors, and contract purchases of materials and services are consistent with quality control procedures required by this section.
- (v) Determine quality performance by conducting surveys and field inspections approved by the Pipeline Coordinator of all the facilities of Lessees' contractors and subcontractors.
- (vi) Maintain quality determination records on all of the above procedures to ensure data identification and retrieval approved by the Pipeline Coordinator.

17. Reservation of Certain Rights to the State

a. The State reserves and shall have a continuing and reasonable right of access to any part of the lands (including the subsurface of, and the air space above, such lands) that are subject to this Lease, and a continuing and reasonable right of physical entry to any part of the Pipeline, for inspection or monitoring purposes and for any other purpose or reason that is reasonably consistent with any right or obligation of the State under any law or regulation, this Lease, or any other agreement, permit or authorization relating in whole or in part to all or any part of the Pipeline.

b. The right of access and entry reserved in Subsection "a" of this section shall extend to and be enjoyed by any contractor of the State, any subcontractors (at any tier) of the contractor and their respective agents and employees, as well as such other Persons as may be designated from time to time in writing by the Pipeline Coordinator.

c. The granting of this Lease is subject to the express condition that the exercise of the rights and privileges granted under this Lease will not unduly interfere with the management, administration, or disposal by the State of the land affected by this Lease, and that the Lessees agree and consent to the occupancy and use by the State, its grantees, permittees, or other lessees of any part of the Right-of-Way not actually occupied or required by the Pipeline for the full and safe utilization of the Pipeline, for necessary operations incident to land management, administration, or disposal.

d. Pursuant to AS 38.05.125, the State reserves rights as follows:

"The party of the first part, Alaska, hereby expressly saves, excepts and reserves out of the grant hereby made, unto itself, its lessees, successors, and assigns forever, all oils, gases, coal, ores, minerals, fissionable materials, and fossils of every name, kind or description, and which may be in or upon said lands above described, or any part thereof, and the right to explore the same for such oils, gases, coal, ores, minerals, fissionable materials, and fossils, and it also hereby expressly saves and reserves out of the grant hereby made, unto itself, its lessees, successors, and assigns forever, the right to enter by itself, its or their agents, attorneys, and servants upon said lands, or any part or parts thereof, at any and all times, for the purpose of opening, developing, drilling, and working mines or wells on these or other lands and taking out and removing therefrom all such oils, gases, coal, ores, minerals, fissionable materials and fossils, and to that end it further expressly reserves out of the grant hereby made, unto itself, its lessees, successors, and assigns forever, the right by its or their agents, servants and attorneys at any and all times to erect, construct, maintain, and use all such buildings, machinery, roads, pipelines, powerlines, and railroads, sink such shafts, drill such wells, remove such soil, and to remain on said lands or any part thereof for the foregoing purposes and to occupy as much of said lands as may be necessary or convenient for such purposes hereby expressly reserving to itself, its lessees, successors, and assigns, as aforesaid, generally all rights and power in, to, and over said land, whether herein expressed or not, reasonably necessary or convenient to render beneficial and efficient the complete enjoyment of the property and rights hereby expressly reserved."

e. There is reserved to the State the right to grant additional permits or easements for rights-of-way or other uses to third parties for compatible uses on, or adjacent to, the lands subject to the Right-of-Way. Before the State grants an additional right-of-way permit for a compatible use, the State will notify Lessees of its intentions and

shall consult with Lessees before taking final action in that regard.

f. No rights shall be exercised by the State under this section until it complies with the provisions of AS 38.05.130.

#### 18. Reimbursement of State Expenses

a. Lessees shall reimburse the State for all reasonable costs incurred by the State in monitoring construction (including but not limited to design review) and termination of all or any part of the pipeline system. The Commissioner shall administer this lease to reasonably assure that unnecessary employment of personnel and needless expenditure of funds are avoided.

b. Reimbursement provided for in this section and in Section 19 hereof shall be made for each quarter ending on the last day of March, June, September and December. On or before the sixtieth (60th) day after the close of each quarter, the Commissioner shall submit to Lessees a written statement of any costs incurred by the State during that quarter which are reimbursable. This statement may be supplemented within sixty (60) days after the end of a fiscal year for costs incurred in that year but by excusable neglect not previously submitted.

c. Lessees shall have the right to conduct, at their own expense, reasonable audits by auditors or accountants designated by Lessees, of the books, records and documents of the State relating to the items on any particular statement that shall be submitted in accordance with the procedure outlined in Subsection "b" of this section, at the places where such books, records and documents are usually maintained and at reasonable times; provided, however, that written notice of a desire to conduct such an audit must be given to the Commissioner (1) at least fifteen (15) days prior to such audit, and (2) by not later than the seventy-fifth (75th) day after the close of the quarter for which the books, records and documents are sought to be audited; and provided, further, that any such audits shall be completed within ninety (90) days after receipt by Lessees of the statement containing the items to be audited.

d. Nothing herein shall require the State to maintain books, records or documents other than those usually maintained by it, provided such books, records and documents reasonably segregate and identify the costs for which reimbursement is required by this section. Such books, records and documents shall be preserved or caused to be preserved for a period of at least two (2) years after the State submits a statement for reimbursement based on such books, records and documents. The auditors or accountants designated by Lessees shall have

reasonable access to, and the right to copy, at their expense, all such books, records and documents.

e. Lessees shall pay to the State the total amount shown on each statement by not later than the ninetieth (90th) day following the close of the quarter to which the statement relates; provided, however, that if any of the Lessees decide to dispute any item of a statement for reimbursement, Lessees, on or before the date on which the statement is due and payable, shall give the Commissioner written notice of each item that is disputed, accompanied by a detailed explanation of their objection, or written notice of each item to be audited, and shall pay the State those amounts for the items that are not disputed or are not to be audited. Lessees shall give the Commissioner prompt written notice of the completion of the audit of all items of a statement being audited. On a date fixed by the Commissioner, but not more than thirty (30) days after notice of a disputed statement or after notice of the completion of the audit, the Commissioner and the Lessees shall meet to discuss and attempt to resolve, all items which are disputed or which have not been resolved by the audit. Any items resolved as being payable to the State shall be paid within thirty (30) days after being resolved, together with interest thereon, up to the date of payment at a total annual percentage rate equal to the discount rate of the Federal Reserve Bank for District Twelve (San Francisco) in effect on the original due date of the statement.

f. In addition to the right to audit quarterly statements as provided in Subsection "c" of this section, if Lessees believe that unnecessary employment of personnel or needless expenditure of funds has occurred or is likely to occur, Lessees may request the approval of the Commissioner for Lessees to conduct promptly, and at their own expense, a full and complete audit by auditors or accountants designated by Lessees, of the books, records and documents concerning the matters to be audited, at the places where the books, records and documents to be audited are usually maintained and at reasonable times. Such request shall be in writing, shall specify the matters to be audited and shall state the information available to Lessees upon which the request is based. The Commissioner shall approve or deny such request promptly, and approval of any such request shall not be unreasonably withheld. Any complaint which Lessees may have as a result of such audit shall be made to the Commissioner and shall be governed by the procedure set forth in Subsection "e" of this section to the extent applicable.

#### 19. Right of the State to Perform

a. If, after thirty (30) days, or in emergencies such shorter periods as shall not be unreasonable, following the making of a demand therefor by the Commissioner in the manner that is provided in Stipulation 1.6 for giving written

notices, Lessees, or their respective agents, employees, contractors or subcontractors (at any tier), shall fail or refuse to perform any action required by this Lease or by the Pipeline Coordinator under this Lease, the State shall have the right, but not the obligation, to perform any or all of such actions at the sole expense of Lessees. Prior to delivery of any such demand, the Pipeline Coordinator shall confer with the Lessees, if practicable to do so, regarding the required action or actions that are included in the demand. The Pipeline Coordinator shall submit to Lessees a statement of the expenses incurred by the State during the preceding quarter in the performance by the State of any required action and the amount shown to be due on each such statement shall be paid by Lessees. Lessees may dispute whether the work involved was justified and the reasonableness of the specifications for, and the cost of, such work.

20. Breach; Extent of Liability of Lessees

The liabilities and obligations of each Lessee under this Lease are joint and several, except that the liabilities and obligations of each Lessee are several under the following sections:

- |         |    |  |
|---------|----|--|
| Section | 1  | Grant of Right-of-Way  |
|         | 2  | Duration of Right-of-Way   |
|         | 3  | Rental   |
|         | 4  | Common Carrier   |
|         | 5  | Interchange of Oil   |
|         | 6  | Books, Accounts and Records; Access to Property and Records                                  |
|         | 7  | Connections for Delivery   |
|         | 8  | Connections for State-Owned Oil  |
|         | 9  | Compliance with State Laws and with Regulations and Orders of the Alaska Pipeline Commission |
|         | 10 | Damage or Destruction of Leasehold or Other Property   |
|         | 11 | Transfer, Assignment, or other Disposition   |
|         | 12 | Appointment of Agent for Service of Process  |

- 13 Indemnification of the State; Liabilities or Damages Arising where there is Concurrent Use
  - 14 Liability and Property Damage Insurance, Security, Undertaking or Guaranty
  - 15 Lands Condemned under AS 38.35.130
  - 18 Reimbursement of State Expenses
  - 19 Right of the State to Perform
  - 22 Duty of Lessees to Prevent or Abate
  - 28 Local Hire
  - 29 Release of Right-of-Way
  - 30 Forfeiture of Lease
  - 31 Agreements among Lessees
  - 35 Remedies Cumulative; Equitable Relief
  - 39 Authority to Enter Agreements
  - 42 Binding Effect of Covenants
- Stipulation 1.4
- Stipulation 1.10.1

Provided, however, that as to any obligation to pay money to the State, each Lessee shall not be liable for any greater portion thereof than the amount of the total liability multiplied times the percentage of its undivided interest in the Right-of-Way at the times the liability was incurred.

21. Valdez Terminal Facility

Lessees shall afford representatives of the United States Department of the Interior full and free access at all times to the Valdez Terminal site for the purpose of enforcing the stipulations of the United States Department of the Interior at the facility.

22. Duty of Lessees to Prevent or Abate

a. Lessees shall prevent or, if the procedure, activity, event or condition already exists or has occurred, shall abate, as completely as practicable, using the best practicable technology available, any physical or mechanical procedure, activity, event or condition, existing or occurring at any time (1) that is susceptible to prevention or abatement;

(2) that arises out of, or could affect adversely, the construction, operation, maintenance or termination of all or any part of the Pipeline; and (3) that causes or threatens to cause (a) a hazard to the safety of workers or to the public health or safety (including, but not limited to personal injury or loss of life with respect to any Person or Persons) or (b) serious harm or damage to the environment (including but not limited to water and air quality, areas of vegetation or timber, fish or other wildlife populations, or their habitats, or any other natural resource).

b. Lessees shall cause their respective agents, employees, contractors and subcontractors (at any tier) to observe and comply with the foregoing provisions of this section.

23. Compliance with Notices to Proceed

All construction of the Pipeline on State Land undertaken by Lessees shall comply in all respects with the provisions of Notices to Proceed that are issued by the Pipeline Coordinator.

24. Temporary Suspension Orders of the Pipeline Coordinator

a. The Pipeline Coordinator may at any time order the temporary suspension of any or all construction, operation, maintenance or termination activities of Lessees, their agents, employees, contractors or subcontractors (at any tier) in connection with the Pipeline, including but not limited to the transportation of Oil, if

(i) An immediate temporary suspension of such activities is necessary to protect (A) public health or safety (including, but not limited to, personal injury or loss of life with respect to any Person or Persons), or (B) the environment from immediate, serious and irreparable harm or damage (including, but not limited to, harm or damage to water and air quality, areas of vegetation or timber, fish or other wildlife populations, or their habitats, or any other natural resource); or

(ii) Lessees, their respective agents, employees, contractors or subcontractors (at any tier) are failing or refusing, or have failed or refused, to comply with or observe (A) any provision of this Lease necessary to protect public health, safety or the environment, or (B) any order of the Pipeline Coordinator implementing any such

provisions of this Lease or of any agreement, permit or authorization that shall have been duly approved, issued or granted by the Pipeline Coordinator in connection with all or any part of the Pipeline.

b. The Pipeline Coordinator shall give Lessees prior notice of any temporary suspension order as he deems practicable. If circumstances permit, the Pipeline Coordinator shall discuss with Lessees, prior to issuing the order, appropriate measures to (i) forthwith abate or avoid the harm or threatened harm that is the reason for the issuance of the order or (ii) effect compliance with the provision or order, whichever is applicable.

c. After a temporary suspension order has been given by the Pipeline Coordinator, Lessees shall promptly comply with all of the provisions of the order and shall not resume any activity suspended or curtailed thereby except as provided in this Lease or pursuant to court order.

d. Any temporary suspension order which, in an emergency, is given orally shall be confirmed in writing, as provided for in Stipulation 1.6.2. Each written order or written confirmation of an order shall set forth the reasons for the suspension. Each temporary suspension order shall be limited, insofar as is practicable, to the particular area or activity that is or may be affected by the activities or conditions that are the basis of the order. Each order shall be effective as of the date and time given, unless it specifies otherwise. Each order shall remain in full force and effect until modified or revoked in writing by the Pipeline Coordinator.

e. Resumption of any suspended activity shall be promptly authorized by the Pipeline Coordinator in writing when he is satisfied that (i) the harm or threatened harm has been abated or remedied, or (ii) Lessees have effected, or are ready, willing and able to effect compliance with the provision or order, whichever is applicable.

f. Any temporary suspension order that is given or issued in accordance with this section shall be subject to the provisions of Section 25.

## 25. Appeal Procedure

a. Appeals from Temporary Suspension Orders of Pipeline Coordinator; Appeals from Denials of Resumption of Suspended Activities:

(i) Lessees may appeal directly to the Commissioner for review of (A) any temporary suspension order issued by the Pipeline Coordinator pursuant to Section 24 of this Lease; and (B) any denial

by the Pipeline Coordinator of a request for resumption of activities suspended pursuant to such temporary suspension order. Lessees shall file a notice of appeal for review promptly after the effective date of the order or denial being appealed. The notice shall set forth with particularity the order or denial being appealed. To perfect an appeal, Lessees shall promptly file with the Commissioner a statement of facts of the matter and a statement of applicable law supplemented by such documents and arguments on the facts and the law as Lessees may wish to present to justify modification or reversal of the order or denial. All statements of facts shall be under oath.

(ii) Except as provided hereinafer in this section, the Commissioner shall decide the appeal within three (3) days from the date the Commissioner receives notice from Lessees that all statements for review have been submitted. If the Commissioner does not render a decision within that time, the appeal shall be considered to have been denied by the Commissioner, and such denial shall constitute the final administrative decision of the Commissioner.

(iii) Any decisions of the Commissioner as to any matter arising out of this Lease shall constitute the final administrative decision of the Commissioner.

b. Appeals with Respect to Notices to Proceed:

(i) Lessees may appeal to the Commissioner if, with respect to a particular application for a Notice to Proceed (A) the Pipeline Coordinator has refused to issue the Notice to Proceed within the time prescribed pursuant to Stipulation 1.7.4.4; or (B) the Pipeline Coordinator has issued a Notice to Proceed not substantially in accord with the application therefor. If the Pipeline Coordinator has not acted within the prescribed time to either issue or deny the issuance of the Notice to Proceed, such failure to act shall be deemed to be a refusal by the Pipeline Coordinator to issue the Notice to Proceed.

(ii) The ground or grounds for such an appeal shall be one or more of the following:

(A) The Pipeline Coordinator has construed the applicable Stipulations erroneously; or

(B) The Pipeline Coordinator has imposed arbitrary and capricious requirements to enforce the Stipulations; or

(C) Lessees have made a bona fide effort to meet the requirements of the Pipeline Coordinator, but with the best practicable technology available, are unable to comply; or

(D) By failing to act upon the requested Notice to Proceed within the prescribed time, the Pipeline Coordinator has been unreasonable.

(iii) Each appeal under this subsection shall be subject to the appeal procedure set forth in Subsection "a" of this section.

c. As to any other matter relating to construction upon which a decision of the Commissioner is required under this Lease, a failure of the Commissioner to render a decision within three (3) days after receiving a request for a decision from the Lessees shall constitute a denial of that request and shall constitute the final administrative decision of the Commissioner.

d. As to matters not covered by Subsections "a," "b" and "c" of this section upon which a decision of the Commissioner is required under this Lease, the failure of the Commissioner to reach a decision within thirty (30) days after receiving a request for a decision from the Lessees shall constitute a denial of that request and shall constitute the final administrative decision of the Commissioner.

## 26. Requests to Resume; Appeals

a. If by a temporary suspension order issued pursuant to Section 24 of this Lease, the Pipeline Coordinator has ordered the suspension of an activity of Lessees, Lessees may at any time thereafter file with the Pipeline Coordinator a request for permission to resume that activity on the ground that the reason for the suspension no longer exists. The request shall contain a statement, under oath, of the facts which in Lessees' view support the propriety of resumption.

b. The Pipeline Coordinator shall render a decision, either granting or denying the request, within three (3) days

of the date that the request was filed with him. If the Pipeline Coordinator does not render a decision within that time, the request shall be considered denied and the Lessees may appeal to the Commissioner as provided in Section 25.

27. Liability of the State

Lessees agree that neither the State nor any of its officials, employees, agents or contractors shall be liable for money damages for any loss caused to Lessees, their agents or contractors, by reason of decisions made in respect to the application and administration of this Lease; provided, however, this Lease shall not be interpreted to excuse the State, its officials, employees, agents or contractors from liability for damages or injuries resulting from other acts which are acts of negligence or acts of willful misconduct.

28. Local Hire

Lessees shall comply with all valid and applicable laws and regulations with regard to hire of Alaska residents. Qualified Alaska residents shall be hired as required by AS 38.40; Lessees shall not discriminate against Alaska residents, as prohibited by AS 38.40 and other applicable and valid laws and regulations of the State of Alaska. All valid and appropriate provisions of AS 38.40 are incorporated by reference into this Lease.

29. Release of Right-of-Way

a. In connection with the relinquishment, abandonment or other termination before the expiration of the grant of the Right-of-Way, of any right or interest in the Right-of-Way, and/or in the use of all or any part of the lands subject to the Right-of-Way, each Lessee holding such right or interest shall promptly execute and deliver to the State, through the Commissioner, a valid instrument of release in recordable form, which shall be executed and acknowledged with the same formalities as a deed. The instrument of release shall contain, among other things, appropriate recitals, a description of the pertinent rights and interests, and for the benefit of the State and its grantees or assigns, express representations and warranties by the Lessees that they are the sole owners and holders of the rights or interests described therein and that such rights or interests are free and clear of all liens, equities or claims of any kind requiring or that may require the consent of a third party, claiming in whole or in part by, through or under the Lessees, for the valid release or extinguishment thereof, except for such that are owned or claimed by third parties which have joined in the execution of the release. The form and substantive content of each instrument of release shall be approved by the Commissioner, but except as otherwise expressly provided for in this subsection, in no event shall any such instrument operate to increase the then-existing liabilities and obligations of the Lessees furnishing the release.

b. Each release shall be accompanied by such resolutions and certifications as the Commissioner may require in connection with the power or the authority of the Lessees, or of any officer or agent acting on their behalf, to execute, acknowledge or deliver the release.

c. Neither the tender, nor the tender, approval and acceptance, of any such release shall operate as an estoppel or waiver of any claim or judgment against a Lessee or as a relief or discharge, in whole or in part, of any Lessee from any of its then-existing liabilities or obligations (accrued, contingent or otherwise); and notwithstanding any such tender or delivery, or any approval of the Commissioner, if a release shall contain any provision that operates, or that by implication might operate, to discharge or relieve, in whole or in part, a Lessee of and from any of its liabilities or obligations (accrued, contingent or otherwise) or that operates or might operate as an estoppel or waiver of any claim or judgment against a Lessee or as a covenant not to sue, such provision shall be, and shall be deemed to be, void and of no effect whatsoever insofar as it would have the effect of so discharging or relieving a Lessee or operating as an estoppel, waiver or covenant not to sue.

### 30. Forfeiture of Lease

Failure to begin construction of the Pipeline within a reasonable time of the granting of this Lease for reasons within the control of the Lessee or failure of a Lessee of an interest in the Right-of-Way substantially to comply with the terms of the Lease shall be grounds for forfeiture of the Right-of-Way interest of the Lessee in an action brought by the Commissioner in the Superior Court. Before the commencement of an action for forfeiture of an interest in the Right-of-Way under this section, the Commissioner shall give the Lessee or Owner of the interest notice in writing of the alleged default and shall not commence the proceeding unless the Lessee of the interest has failed to initiate good faith efforts to cure the default within 60 days of the notice of the alleged default.

### 31. Agreements Among Lessees

a. The Original Lessees, and each of them, represent and covenant with the State that they have entered into only the following agreements, and no other agreements, written or oral (excluding prior agreements that no longer have any force or effect), which establish each Original Lessee's interest in the Pipeline and each Original Lessee's relationships with the common agent, as referred to in Stipulation 1.4, for all or any phase of the construction, operation, maintenance and termination of the Pipeline or any part thereof:

(i) Agreement entitled "Trans-Alaska Pipeline System Agreement", dated as of August 27, 1970, by and among Atlantic Pipe Line Company\*, BP Pipe Line Corporation\*, Humble Pipe Line Company\*, Amerada Hess Corporation, Home Pipe Line Company, Mobil Pipe Line Company, Phillips Petroleum Company, and Union Oil Company of California, with Exhibit "C," entitled "Enabling Agreement," annexed thereto;

(ii) Agreement entitled "First Supplemental Agreement," dated as of August 27, 1970, by the same parties;

(iii) Agreement entitled "Second Supplemental Agreement," dated as of August 27, 1970, by the same parties;

(iv) Agreement entitled "Third Supplemental Agreement," dated as of August 27, 1970, by the same parties;

(v) Agreement entitled "Fourth Supplemental Agreement," dated as of August 27, 1970, by the same parties;

(vi) Agreement entitled "Fifth Supplemental Agreement," dated as of August 27, 1970, by the same parties;

(vii) Agreement entitled "Agreement for the Design and Construction of the Trans-Alaska Pipeline System," dated as of August 27, 1970, by and among Atlantic Pipe Line Company, BP Pipe Line Corporation, Humble Pipe Line Company, Amerada Hess Corporation, Home Pipe Line Company, Mobil Pipe Line Company, Phillips Petroleum Company, Union Oil Company of California, and Alyeska Pipeline Service Company;

(viii) Agreement entitled "Shareholders Agreement for Alyeska Pipeline Service Company," dated as of August 27, 1970, by the same parties as those listed with respect to the Agreement referred to immediately above;

(ix) Assignment, Assumption, Release and Consent Agreement, dated as of August 28, 1970, in connection with the transfer by Home Pipe Line Company of all of its rights, title and interest in the Pipeline System and in the foregoing agreements, and as a shareholder in and to Alyeska Pipeline Service Company;

\*Note: ARCO Pipe Line Company, a Delaware corporation, represents and covenants that it is the successor by merger to all of the rights and obligations of Atlantic Pipe Line Company. Sohio Pipe Line Company, a Delaware corporation, represents and covenants that it is the successor by merger to all of the rights and obligations of BP Pipe Line Corporation. Exxon Pipeline Company, a Delaware corporation, represents and covenants that it is the same corporation as Humble Pipe Line Company, but that its name has been duly changed to "Exxon Pipeline Company."

(x) Assignment, Conveyance, and Transfer Agreement, dated December 11, 1973, in connection with the transfer by Mobil Pipe Line Company to Mobil Alaska Pipeline Company, a Delaware corporation, of all of the former company's rights under all agreements relating to the Trans-Alaska Pipeline System, to which the former company is a party, and all real or personal property in which the former company may have acquired an ownership interest pursuant to such agreements, and under which Assignment, Conveyance, and Transfer Agreement Mobil Alaska Pipeline Company assumes all undischarged obligations of Mobil Pipe Line Company under any and all of the above mentioned Trans-Alaska Pipeline System agreements, together with certain supporting documents, each dated December 11, 1973; and

(xi) Assignment, Conveyance, and Transfer Agreement, dated January 8, 1974, in connection with the transfer by Union Oil Company of California to Union Alaska Pipeline Company, a California corporation, of all of the former company's rights under all agreements relating to the Trans-Alaska Pipeline System to which the former company is a party, and all real or personal property in which the former company may have acquired an ownership interest pursuant to such agreements, and under which Assignment, Conveyance and Transfer Agreement Union Alaska Pipeline Company assumes all undischarged obligations of Union Oil Company of California under any and all of the above mentioned Trans-Alaska Pipeline System agreements.

b. Said agreements are referred to collectively as the "Ownership Agreements." Each affected Lessee shall deliver promptly to the Commissioner true and correct copies of all modifications of the Ownership Agreements and of all instruments superseding, supplementing, cancelling or rescinding, in whole or in part, any one or more of the Ownership Agreements.

c. In the event Lessees execute an Operating Agreement, as contemplated in Section 5.1 of the Agreement described in Subsection "a"(i) above in this section, or any like or similar agreement with respect to the operation, maintenance or termination of all or any part of the Pipeline, Lessees shall promptly provide the Commissioner with a true and complete copy thereof, together with like copies of all modifications of, and all agreements superseding, supplementing, cancelling or rescinding, in whole or in part, the Operating Agreement or any such like or similar agreement.

32. Rights of Third Parties

The parties hereto do not intend to create any rights under this Lease that may be enforced by third parties for their own benefit or for the benefit of others.

33. Covenants Independent

Each covenant contained in this Lease is, and shall be deemed to be, separate and independent of, and not dependent on, any other covenant contained in this Lease.

34. Waiver not Continuing

The waiver by any party hereto of any breach of any provision of this Lease by any other party hereto, whether such waiver be expressed or implied, shall not be construed to be a continuing waiver or a waiver of, or consent to, any subsequent or prior breach on the part of such other party, of the same or any other provision of this Lease.

35. Remedies Cumulative; Equitable Relief

No remedy conferred by this Lease upon or reserved to the State or the Lessees is intended to be exclusive of any other remedy provided for by this Lease or by law, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing in equity or at law; and the State, in a proper action instituted by it, may seek a decree against a Lessee or Lessees for specific performance and injunctive or other equitable relief, as may be appropriate.

36. Section Headings

The section headings in this Lease are for convenience only, and do not purport to, and shall not be deemed to, define, limit or extend the scope or intent of the section to which they pertain.

37. Interpretation of Lease

The applicable law of the State will be used in resolving questions of interpretation of the Lease.

38. Multiple Copies

This Lease shall be executed in eight (8) counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

39. Authority to Enter Agreement

Each Lessee represents and warrants to the State that (a) it is duly authorized and empowered under the applicable laws of the state of its incorporation and by its charter and by-laws to enter into and perform this Lease in accordance with the provisions hereof; (b) its board of directors or duly authorized executive committee has duly approved and has duly authorized the execution, delivery and performance of this Lease insofar as it pertains to the obligations of that Lessee; (c) all corporate and shareholder action that may be necessary or incidental to the approval of this Lease, and the due execution and delivery hereof by Lessee, has been taken; and (d) that all of the foregoing approvals, authorizations and actions are in full force and effect at the time of the execution and delivery hereof.

40. Exhibits; Incorporation of Certain Documents by Reference; Other Exhibits

a. The exhibits that are attached to this Lease and that are listed below in this subsection are, by this reference, incorporated into and made a part of this Lease as if the exhibits were set forth herein in their entirety:

(i) Stipulations for the Right-of-Way Lease for the Trans-Alaska Pipeline, being numbered 1 through 4.1, inclusive, attached hereto as Exhibit "A," which are sometimes referred to in this Lease as the "Stipulations." These provisions are included pursuant to the provisions of AS 38.35.120(d) which require terms and conditions that are reasonably necessary to obligate the Lessees, to the extent reasonably practicable, to (A) prevent conflicts with other existing uses of the land involving a superior public interest; (B) protect State and private property interests; (C) prevent any significant adverse environmental impact, including but not limited to the erosion of the surface of the land, and damage to fish and wildlife and their habitat; (D) restore and revegetate during the term and at termination of this Lease; and (E) protect the interests of individuals living in the general area of the Right-of-Way who rely on fish, wildlife and biotic resources of the area for subsistence purposes.

(ii) A reference to the application for a right-of-way and a reference to the accompanying alignment maps and site location drawings for the Pipeline attached hereto as Exhibit "B."

(iii) A description of the State Land included in the General Route attached hereto as Exhibit "C."

(iv) A description of the Right-of-Way, including all relevant dimensions, for Related Facilities attached hereto as Exhibit "D."

b. The exhibits that are attached to this Lease that are listed below in this subsection are not incorporated into, and are not intended to be made a part of, this Lease. They are attached hereto only for informational purposes:

(i) Cooperative Agreement between the State of Alaska and the United States Department of Interior regarding the Proposed Trans-Alaska Pipeline attached hereto as Exhibit "E."

(ii) Documents delegating certain responsibilities and authority of the Commissioner of Natural Resources to a Pipeline Coordinator attached hereto as Exhibit "F."

41. Lease Not a Waiver of Any State Regulatory Power

This Lease and the covenants contained herein shall not be interpreted as a limit on the exercise by the State of Alaska of any power conferred by valid statute or regulation to protect the environment, health, safety, general welfare, lives, or property of the people of the State of Alaska.

42. Binding Effect of Covenants

The parties acknowledge that all covenants of this Lease are required by the Commissioner. By entering into this Lease, each Lessee is bound by such covenants to the full extent of the power of the State to impose the covenants under its authority as owner of the land herein leased or under its police or regulatory powers or otherwise; provided that the rights of any or all Lessees to challenge the power of the State to require any of these covenants as owner of the land herein leased or under its police or regulatory powers or otherwise is preserved until such time as action to enforce the covenant is taken by the State. Before commencing any such action the Commissioner shall give all Lessees written notice of intent to enforce, and he shall not commence enforcement proceedings unless Lessees have failed to initiate good faith efforts to comply with the notice within thirty (30) days of said notice. Compliance with any covenant or with any such notice by any or all Lessees, shall not constitute a waiver of its or their rights to challenge, from time to time, the power of the State to require or to enforce the same or any other covenant in any subsequent action to enforce taken by the State. A judicial finding that any of these covenants is

unlawful or invalid shall not operate to invalidate this Lease or any other covenant of the Lease.

IN WITNESS WHEREOF, the parties hereto have duly executed this Lease as of the date first above written.

STATE OF ALASKA

By: Charles F. Oberholtzer  
Commissioner, Department  
of Natural Resources

AMERADA HESS CORPORATION

Ernest D. Jensen  
MW SENIOR

ARCO PIPE LINE COMPANY

C. C. Carter

EXXON PIPELINE COMPANY

W. S. Langdon  
PRESIDENT

MOBIL ALASKA PIPELINE COMPANY

E. J. Wacker, Jr.  
E. J. WACKER, JR. Vice President

PHILLIPS PETROLEUM COMPANY

W. H. Powell

SOHIO PIPE LINE COMPANY

Allen L. Dornia  
President

UNION ALASKA PIPELINE COMPANY

John S. Panta  
DHI- PRESIDENT

# Alaska Statutes

## Title 31. Oil and Gas.

### Chapter

- 05. Alaska Oil and Gas Conservation Act (§§ 31.05.005 — 31.05.170)
- 15. Common Purchasers of Oil (§§ 31.15.010 — 31.15.050)
- 30. Miscellaneous Provisions (§ 31.30.010)

Revisor's notes. — The provisions of this title were redrafted in 1985 to remove personal pronouns pursuant to § 4, ch. 58, SLA 1982, and to make other, minor word changes.

### Chapter 05. Alaska Oil and Gas Conservation Act

#### Article

- 1. Administration (§§ 31.05.005 — 31.05.080)
- 2. Regulation of Operations (§§ 31.05.090 — 31.05.120)
- 3. General Provisions (§§ 31.05.150 — 31.05.170)

Revisor's notes. — Under sec. 5, ch. 158, SLA 1978, references in this chapter to the Department of Natural Resources have been changed to Alaska Oil and Gas Conservation Commission, except in AS 31.05.026.

Opinions of attorney general. — This

chapter, which mandates the conservation of oil and gas and prohibits their waste, would not be contravened by a local coastal management plan which comports with the Alaska Coastal Management Program. May 12, 1980, Op. Att'y Gen.

#### Article 1. Administration.

##### Section

- 05. Alaska Oil and Gas Conservation Commission created
- 07. Term of office; vacancy; removal
- 09. Qualifications of members
- 11. Quorum
- 13. Oath of office
- 15. Compensation of members of the commission
- 17. Principal office; seal
- 21. Legal counsel
- 23. Commission staff
- 25. Conflict of interest

##### Section

- 26. Relationship to Department of Natural Resources
- 27. Land subject to commission's authority
- 30. Powers and duties of commission
- 35. Confidential reports
- 40. Regulations and orders
- 50. Notice
- 60. Action by commission
- 70. Attendance and testimony of witnesses
- 80. Rehearings and appeals

**Sec. 31.05.005. Alaska Oil and Gas Conservation Commission created.** (a) There is created as an independent quasi-judicial agency of the state the Alaska Oil and Gas Conservation Commission, composed of three commissioners appointed by the governor and confirmed by the legislature in joint session.

(b) The governor shall designate one member of the commission as chairman of the commission. This member shall serve as chairman for a term of four years, but may be appointed for successive terms. (§ 1 ch 158 SLA 1978)

**Sec. 31.05.007. Term of office; vacancy; removal.** (a) The term of office of each member is six years. ~~The governor shall designate who among the initial appointees shall serve respectively for terms of two years, four years and six years.~~ A commissioner, upon the expiration of a term, shall continue to hold office until a successor is appointed and qualified.

(b) A vacancy arising in the office of a commissioner shall be filled by appointment by the governor and confirmed by the legislature in joint session, and an appointee selected to fill a vacancy shall hold office for the balance of the full term for which the predecessor on the commission was appointed.

(c) A vacancy in the commission does not impair the authority of a quorum of commissioners to exercise all the powers and perform all the duties of the commission.

(d) The governor may remove a commissioner from office for cause including but not limited to incompetence, neglect of duty or misconduct in office. A commissioner, to be removed for cause, shall be given a copy of the charges and afforded an opportunity to be publicly heard in person or by counsel in the commissioner's own defense upon not less than 10 days' notice. If a commissioner is removed for cause, the governor shall file with the lieutenant governor a complete statement of all charges made against the commissioner and the governor's finding based on the charges, together with a complete record of the proceedings. (§ 1 ch 158 SLA 1978)

**Sec. 31.05.009. Qualifications of members.** Members shall be qualified as follows: one member shall be a licensed professional engineer with educational and professional background in the field of petroleum engineering; one member shall be a geologist with educational and professional background in the field of petroleum geology; one member need not be trained and experienced in the fields of petroleum engineering or petroleum geology. (§ 1 ch 158 SLA 1978)

SEE  
Chpt. 168  
SLA 1990

*Sec. 31.05.010. Application. [Repealed, § 4 ch 158 SLA 1978.]*

**Sec. 31.05.011. Quorum.** Two members of the commission constitute a quorum for the transaction of business, for the performance of a duty, or for the exercise of a power of the commission. (§ 1 ch 158 SLA 1978)

**Sec. 31.05.013. Oath of office.** Each commissioner, before entering upon the duties of office, shall take and subscribe to the oath prescribed for principal officers of the state. (§ 1 ch 158 SLA 1978)

**Sec. 31.05.015. Compensation of members of the commission.** Members of the commission are in the exempt service and shall receive an annual salary. (§ 1 ch 158 SLA 1978)

**Sec. 31.05.017. Principal office; seal.** (a) The commission shall establish a principal office and branch offices necessary to discharge its business efficiently. For the convenience of the public or of parties to a proceeding the commission may hold meetings, hearings or other proceedings at other locations.

(b) The commission shall have an official seal. (§ 1 ch 158 SLA 1978)

*Sec. 31.05.020. [Renumbered as AS 31.05.095.]*

**Sec. 31.05.021. Legal counsel.** (a) The Department of Law shall provide full-time legal counsel to the commission. The legal counsel provided by the Department of Law is subject to the approval of the commission.

(b) The commission may, subject to the approval of the attorney general, contract for the services of additional specialized legal counsel or legal consultants. (§ 1 ch 158 SLA 1978)

**Sec. 31.05.023. Commission staff.** (a) The commission shall employ such staff as it considers necessary to carry out its responsibilities.

(b) The professional staff of the commission and the personal secretary of each commissioner are in the exempt service under AS 39.25.110.

(c) The secretarial and clerical staff of the commission, except the personal secretary of each commissioner, are in the classified service.

(d) In addition to its staff of regular employees, the commission may contract for and engage the services of consultants and experts the commission considers necessary. (§ 1 ch 158 SLA 1978)

**Sec. 31.05.025. Conflict of interest.** (a) Members and employees of the commission, except clerical and secretarial staff, are subject to AS 39.50.

(b) A member of the commission is disqualified from voting upon any matter before the commission in which the member has a conflict of interest. (§ 1 ch 158 SLA 1978)

**Sec. 31.05.026. Relationship to Department of Natural Resources.** (a) The Department of Natural Resources shall have standing before the commission to raise all issues relating to state-owned land without regard to the type of proprietary interest held by the state in that land.

(b) With respect to federal land from which the state or any subdivision of the state is entitled under federal law to receive a share of the federal royalty interest, the Department of Natural Resources shall have the same standing before the commission as if it were the holder of the equivalent royalty interest.

(c) When both the Department of Natural Resources and the commission have the authority to require, and do require, the submission of substantially the same information from persons subject to this chapter, the commission, in order to alleviate the administrative burdens placed on those persons, may by regulation enter into an agreement with the Department of Natural Resources whereby either the commission or the Department of Natural Resources shall have the responsibility to collect the information lawfully required by both.

(d) For budget and audit procedures and considerations, the commission shall have the same standing as any other major state agency. Whenever practicable the commission may enter into state inter-agency agreements concerning administrative, employee relations, and fiscal duties.

(e) The Department of Natural Resources shall have the same standing (no more or less) before the commission as granted by law to any other proprietary interest. (§ 1 ch 158 SLA 1978)

~~**Sec. 31.05.027. Land subject to commission's authority.** The authority of the commission applies to all land in the state lawfully subject to its police powers. It applies to land of the United States or to land subject to the jurisdiction of the United States only to the extent that control and supervision of conservation of oil and gas and prevention of waste by the United States on its land fails to carry out the intent and purposes of this chapter, and otherwise applies to federal land so far as an officer of the United States having jurisdiction, or an authorized representative, shall approve any of the provisions of this chapter or orders of the commission which affect~~

SEE  
Chpt. 86  
SLA 1990

~~land. The authority of the commission further applies to all land included in a voluntary cooperative or unit plan of development or operation entered into in accordance with AS 38.05.180(p). (§ 1 ch 158 SLA 1978; am § 32 ch 94 SLA 1980)~~

**Sec. 31.05.030. Powers and duties of commission.** (a) The commission has jurisdiction and authority over all persons and property, public and private, necessary to carry out the purposes and intent of this chapter.

(b) The commission shall investigate to determine whether or not waste exists or is imminent, or whether or not other facts exist which justify or require action by it.

(c) The commission shall adopt regulations and orders and take other appropriate action to carry out the purposes of this chapter.

(d) The commission may require

(1) identification of ownership of wells, producing leases, tanks, plants and drilling structures;

(2) the making and filing of reports, well logs, drilling logs, electric logs, lithologic logs, directional surveys, and all other subsurface information on a well drilled for oil or gas, or for the discovery of oil or gas, or for geologic information, and the required reports and information shall be filed within 30 days after the completion, abandonment, or suspension of the well;

(3) the drilling, casing and plugging of wells in a manner that will prevent the escape of oil or gas out of one stratum into another, the intrusion of water into an oil or gas stratum, the pollution of fresh water supplies by oil, gas or salt water, and prevent blowouts, cavings, seepages and fires;

(4) the furnishing of a reasonable bond with sufficient surety conditions for the performance of the duty to plug each dry or abandoned well or the repair of wells causing waste;

(5) the operation of wells with efficient gas-oil and water-oil ratios, and may fix these ratios;

(6) the gauging or other measuring of oil and gas to determine the quality and quantity of oil and gas;

(7) every person who produces oil or gas in the state to keep and maintain for a period of five years in the state complete and accurate records of the quantities of oil and gas produced, which shall be available for examination by the Department of Natural Resources or its agents at all reasonable times;

(8) the measuring and monitoring of oil and gas pool pressures;

(9) the filing and approval of a plan of development and operation for a field or pool in order to prevent waste, insure a greater ultimate recovery of oil and gas, and protect the correlative rights of persons owning interests in the tracts of land affected.

(e) The commission may regulate, for conservation purposes

- (1) the drilling, producing and plugging of wells;
- (2) the shooting and chemical treatment of wells;
- (3) the spacing of wells;
- (4) the disposal of salt water, nonpotable water and oil field wastes;
- (5) the contamination or waste of underground water;
- (6) the quantity and rate of the production of oil and gas from a well or property; this authority shall also apply to a well or property in a voluntary cooperative or unit plan of development or operation entered into in accordance with AS 38.05.180(p).

(f) The commission may classify wells as oil or gas wells for purposes material to the interpretation or enforcement of this chapter.

(g) When the commission finds sufficient likelihood of an unexpected encounter of oil, gas, or other hazardous substance as a result of well drilling in an area of the state, the commission may, by regulation, designate the area and specify a depth in the area as one in which wells or any boring into the soil in excess of the specified depth but not otherwise subject to this chapter are subject to the regulations and requirements adopted under this section. The designation of an area or specification of a depth under this subsection does not constitute a certification that no hazardous substance will be encountered in another area or at a lesser depth, and the state is not liable for any damages arising from such an unexpected encounter of a hazardous substance.

(h) The commission may take all actions necessary to allow the state to acquire primary enforcement responsibility under 42 U.S.C. 300h-4 (Safe Drinking Water Act of 1974, as amended, 42 U.S.C. 300f-300j), for the control of underground injection related to the recovery and production of oil and natural gas. (§ 4 ch 40 SLA 1955; am § 2 ch 75 SLA 1960; am § 1 ch 209 SLA 1970; am § 1 ch 87 SLA 1977; am §§ 1, 2 ch 160 SLA 1978; am § 1 ch 91 SLA 1984)

*Effect of amendments.* — The 1984 amendment added subsection (h).

**Sec. 31.05.035. Confidential reports.** (a) For all wells for which a permit to drill has been issued by the commission since January 3, 1959, the commission may require:

- (1) the making and filing of reports, well logs, drilling logs, electric logs, lithologic logs, directional surveys, and all other subsurface information on a well drilled for oil or gas, or for the discovery of oil or gas, or for geologic information; and

- (2) the filing of flow test information and all logs, except experimental logs and velocity surveys run on a well and not required by (1) of this subsection;

(3) the operator to make available for copying the digitized log information, if it is available, on any log required to be filed under (1) or (2) of this subsection.

(b) Reports and information required under (a)(1) and (2) of this section shall be filed within 30 days after the completion, abandonment, or suspension of a well. However, under (a)(1) of this section, the commission may not require the making of a log on a well completed, abandoned or suspended before June 19, 1970.

(c) The reports and information required in (a) of this section shall be kept confidential for 24 months following the 30-day filing period unless the owner of the well gives written permission to release the reports and information at an earlier date. If the commissioner of natural resources finds that the required reports and information contain significant information relating to the valuation of unleased land in the same vicinity, the commissioner shall keep the reports and information confidential for a reasonable time after the disposition of all affected unleased land, unless the owner of the well gives written permission to release the reports and information at an earlier date. Well location, depth, status and production data and production reports required by the commission to be filed subsequent to the 30-day filing period shall be considered public information and shall not be classified confidential. Production data, as used in this subsection, means volume, gravity and gas-oil ratio of all production of oil or gas after the well begins regular production.

(d) Engineering, geological, and other information not required by (a) of this section but voluntarily filed with the commission shall be kept confidential if the person filing the information so requests.

(e) Notwithstanding (c) of this section, claims of confidentiality will be denied for information disclosed to the commission under AS 31.05.030(h) that is required to be disclosed under 42 U.S.C. 300h-4. (§ 2 ch 209 SLA 1970; am §§ 3 — 6 ch 160 SLA 1978; am § 86 ch 6 SLA 1984; am § 2 ch 91 SLA 1984)

*Effect of amendments.* — The first 1984 amendment, in the second sentence in subsection (c), inserted "of natural resources" and substituted "the commissioner" for "he" near the middle of the sentence. The second 1984 amendment added subsection (e).

#### NOTES TO DECISIONS

Cited in *Hammond v. North Slope Borough*, Sup. Ct. Op. No. 2499 (File Nos. 5550, 5558), 645 P.2d 750 (1982).

**Sec. 31.05.040. Regulations and orders.** (a) The commission shall adopt regulations governing practice and procedure before it under this chapter.

(b) All orders issued by the commission shall be in writing, shall be entered in full and indexed in books kept by the commission for that purpose, and shall be public records open for inspection at all times during reasonable office hours. A copy of an order certified by the commission, under its seal, shall be received in evidence in all courts of the state with the same effect as the original. (§ 9(1) and (5) ch 40 SLA 1955)

**Cross references.** — For administrative procedures generally, see AS 44.62.

**Sec. 31.05.050. Notice.** (a) A notice required by this chapter shall be given in accordance with the Administrative Procedure Act (AS 44.62).

(b) Procedures to be followed under (a) of this section do not apply if the nature of the notice is not of a statewide or general application but is concerned only with operations on a single well or within a single field and the modification of procedure is within the authority delegated to the commission under AS 31.05.030. A notice required by this chapter shall be given by one publication in a newspaper published in the borough in which the hearing is to be held, or if none is published in the borough, in a newspaper published in this state and circulating within the borough, and posted in at least one public place within the borough, at least 10 days before the date of the hearing. The notice shall be issued in the name of the state, shall be signed by the commission, and shall specify the style and number of the proceeding, the time and place of the hearing, and shall briefly state the purpose of the proceeding. The commission may also give, or require the giving of, additional notice in a proceeding, or class of proceeding, which it considers necessary or desirable. (§ 9(4) ch 40 SLA 1955; am § 1 ch 190 SLA 1968; am § 1 ch 87 SLA 1969)

**Sec. 31.05.060. Action by commission.** (a) The commission may act upon its own motion, or upon the petition of an interested person. On the filing of a petition concerning a matter within the jurisdiction of the commission under this chapter, the commission shall promptly fix a date for a hearing, and shall cause notice of the hearing to be given. The hearing shall be held without undue delay after the filing of the petition. The commission shall enter its order within 30 days after the hearing.

(b) Except as provided in this subsection, any action by the

commission under this chapter that has statewide or general application shall be performed in accordance with the Administrative Procedure Act (AS 44.62). Any action by the commission under this chapter that has application to a single well or single field need not comply with the provisions of AS 44.62.330 — 44.62.630, but shall be performed in accordance with regulations of the commission designed to afford persons affected by the action notice and an opportunity to be heard. (§ 9(6) ch 40 SLA 1955; am § 7 ch 160 SLA 1978)

**Collateral references.** — 58 C.J.S.,  
Mines and Minerals, § 242.

**Sec. 31.05.070. Attendance and testimony of witnesses.** (a) The commission may summon witnesses, administer oaths, and require the production of records, books and documents for examination at a hearing or investigation conducted by it. A person may not be excused from attending and testifying, or from producing books, papers and records before the commission or a court, or from obedience to the subpoena of the commission or a court, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of that person may tend to incriminate or subject that person to a penalty or forfeiture. This section does not require a person to produce books, papers or records, or to testify in response to an inquiry not pertinent to some question lawfully before the commission or court for determination. A natural person is not subject to criminal prosecution or to a penalty or forfeiture for or on account of any transaction, matter or thing concerning which, in spite of objection, that person may be required to testify or produce evidence, documentary or otherwise, before the commission or court, or in obedience to its subpoena. However, a person testifying is not exempt from prosecution and punishment for perjury committed in so testifying.

(b) If a person fails or refuses to comply with the subpoena issued by the commission, or refuses to testify as to any matter regarding which the person may be interrogated, any court of record in the state, upon application of the commission, may issue an attachment for the person and compel that person to comply with the subpoena, and attend before the commission and produce the records, books, and documents for examination, and give testimony. The court may punish for contempt as in the case of disobedience to a subpoena issued by the court, or for refusal to testify in court. (§ 10 ch 40 SLA 1955)

**Sec. 31.05.080. Rehearings and appeals.** (a) Within 20 days after written notice of the entry of an order or decision of the commission, or such further time as the commission grants for good cause shown, a person affected by it may file with the commission an application for the rehearing in respect of the matter determined by the order or decision, setting forth the respect in which the order or decision is believed to be erroneous. The commission shall grant or refuse the application in whole or in part within 10 days after it is filed, and failure to act on it within this period is a refusal of it and a final disposition of the application. If the hearing is granted, the commission may enter a new order or decision after rehearing as may be required under the circumstances.

(b) A party to the rehearing proceeding, dissatisfied with the disposition of the application for rehearing, may appeal from it to the superior court in the judicial district in which any property affected by the decision of the commission is located, by filing a petition for the review of the action of the commission within 20 days after the entry of the order following rehearing or after the refusal of rehearing as the case may be. The petition shall state briefly the nature of the proceedings before the commission and shall set out the order or decision of the commission complained of and the grounds of invalidity of it upon which the applicant will rely. However, the questions reviewed on appeal shall be only questions presented to the commission by the application for rehearing. Notice of appeal shall be served upon the adverse parties and the commission in the manner provided for the service of summons in civil proceedings. The trial upon appeal shall be without a jury, and the transcript of proceedings before the commission, including the evidence taken in hearings by the commission, shall be received in evidence by the court in whole or in part upon offer by either party, subject to legal objections to evidence, in the same manner as if the evidence was originally offered in the superior court. The commission's action complained of is prima facie valid and the burden is upon the party seeking review to establish the invalidity of the action of the commission. The court shall determine the issues of fact and of law and shall, upon a preponderance of the evidence introduced before the court, which may include evidence in addition to the transcript of proceedings before the commission, and the applicable law, enter its order either affirming or vacating the order of the commission. Appeals may be taken from the judgment or decision of the superior court in the same manner as provided for appeals from any other final judgment entered by a superior court.

(c) The pendency of proceedings to review does not of itself stay or suspend operation of the order or decision being reviewed, but during the pendency of the proceedings, the superior court may, upon its own motion or upon proper application of a party, stay or suspend, in whole or in part, operation of the order or decision pending review, on the

terms the court considers just and proper and in accordance with the rules of civil procedure. The court, as a condition to staying or suspension of operation of an order or decision, may require that one or more parties secure, in the form and amount as the court considers just and proper, one or more other parties against loss or damage due to the staying or suspension of the commission's order or decision, if the action of the commission is affirmed.

(d) The rules of practice and procedure in civil cases govern the proceedings for review and appeal to the extent they are consistent with this chapter. (§ 11 ch 40 SLA 1955)

Revisor's notes. — The procedures for appeal set out in this section are superseded by the rules of court. See App. R. 607, adopted Nov. 15, 1980.

Cross references. — For rules of court governing appeals from administrative agencies, see App. R. 601-611.

Article 2. Regulation of Operations.

Section

- 90. Permits and fees to drill wells
- 95. Waste prohibited
- 100. Establishment of drilling units for pools

Section

- 110. Unitization and unitized operation of pools and integration of interests by agreement
- 120. Use of gas from well to manufacture carbon products without permit is prima facie waste

Sec. 31.05.090. Permits and fees to drill wells. A person desiring to drill a well in search of oil or gas shall notify the commission of the person's intent on a form prescribed by the commission and shall pay a fee of \$100 for a permit for each well sought to be drilled. Upon receipt of notification and fee, the commission shall promptly issue a permit to drill, unless the drilling of the well is contrary to law or a regulation or order of the commission, or unless the person is in violation of a commission regulation, order or stipulation pertaining to drilling, plugging or abandonment of a well. The drilling of a well is prohibited until a permit to drill is obtained in accordance with this chapter. (§ 5 ch 40 SLA 1955; am § 1 ch 120 SLA 1970)

Sec. 31.05.095. Waste prohibited. The waste of oil and gas in the state is prohibited. (§ 1 ch 40 SLA 1955)

Revisor's notes. — Formerly AS 31.05.020. Renumbered in 1985.

Collateral references. — 58 C.J.S., Mines and Minerals, § 234.

Constitutionality of statute controlling exploitation or waste of oil and gas. 24 ALR 307; 78 ALR 834.

Constitutionality of statute, ordinance,

or regulation limiting rights of surface owner in respect of oil or gas. 67 ALR 1346; 99 ALR 1119.

Construction and effect of statutes regulating production of oil or gas in a manner or under conditions constituting waste. 86 ALR 431.

**Sec. 31.05.100. Establishment of drilling units for pools.** (a) For the prevention of waste, to protect and enforce the correlative rights of lessees in a pool, and to avoid the augmenting and accumulation of risks arising from the drilling of an excessive number of wells, or the reduced recovery which might result from too small a number of wells, the commission shall, after a hearing, establish a drilling unit or units for each pool. The establishment of a unit for gas shall be limited to the production of gas.

(b) Each well permitted to be drilled on a drilling unit shall be drilled under the rules and regulations and in accordance with the spacing pattern as the commission prescribes for the pool in which the well is located. Exceptions to the rules and spacing pattern may be granted where it is shown, after notice and hearing, that the unit is partly outside the pool, or for some other reason a well so located on the unit would be nonproductive, or topographical conditions are such as to make the drilling at such a location unduly burdensome. If an exception is granted, the commission shall take such action as will offset any advantage which the person securing the exception may have over other producers by reason of the drilling of the well as an exception, and so that drainage from developed units to the tract with respect to which the exception is granted will be prevented or minimized, and the producer of the well drilled as an exception will be allowed to produce no more than a just and equitable share of the oil and gas in the pool.

(c) When two or more separately owned tracts of land are embraced within an established drilling unit, persons owning the drilling rights in it and the right to share in the production from it may agree to pool their interests and develop their lands as a drilling unit. If the persons do not agree to pool their interests, the commission may enter an order pooling and integrating their interests for the development of their lands as a drilling unit for the prevention of waste, for the protection of correlative rights, or to avoid the drilling of unnecessary wells. Orders effectuating such pooling shall be made after notice and hearing, and shall be upon terms and conditions which will afford to the owner of each tract the opportunity to recover or receive the owner's just and equitable share of the oil and gas in the pool without unnecessary expense. Operations incident to the drilling of a well upon a portion of a unit covered by a pooling order shall be considered for all purposes to be the conduct of the operation upon each separately owned tract in the unit by the several lessees of it. The portion of the production allocated to the lessee of each tract included in a drilling unit formed by a pooling order shall, when produced, be considered as if it had been produced from the tract by a well drilled on it. If pooling is effectuated, the cost of development and operation of the pooled unit chargeable by the operator to the other interested lessee is limited to the actual and reasonable expenditures for this

purpose, including a reasonable charge for supervision. As to lessees who refuse to agree upon pooling, the order shall provide for reimbursement for costs chargeable to each lessee out of, and only out of, production from the unit belonging to such lessee. In the event of a dispute relative to the costs, the commission shall determine the proper costs upon notice to all interested parties and hearing. Appeals may be taken from the determination as from any other order of the commission. If a lessee drills and operates, or pays the expense of drilling and operating the well for the benefit of others, then in addition to any other right conferred by the pooling order, the lessee drilling or operating has a lien on the share of production from the unit accruing to the interest of each of the other lessees for the payment of the proportionate share of such expenses. All the oil and gas subject to the lien, or so much of the oil and gas subject to the lien as is necessary shall be marketed and sold by the creditor, and the proceeds applied in payment of the expenses secured by the lien, with the balance, if any, payable to the debtor.

(d) The commission shall, in all instances where a unit has been formed out of lands or areas of more than one ownership, require the operator, upon request of a lessee, but subject to the right of the operator to market production and collect the proceeds with respect to a lessee in default, as provided in (c) of this section, to deliver to the lessee or assigns the lessee's proportionate share of the production from the well common to the drilling unit. The lessee receiving a share shall provide at the lessee's own expense proper receptacles for the receipt and storage of it.

(e) If persons owning the drilling or other rights in separate tracts embraced within a drilling unit fail to agree upon the pooling of the tracts and the drilling of the well on the unit, and if the commission is without authority to require pooling as provided by this section, then, subject to all other applicable provisions of this chapter, the lessee of each tract embraced within the drilling unit may drill on the lessee's tract, but the allowable production from the tract shall be the proportion of the allowable production for the full drilling unit as the area of the separately owned tract bears to the full drilling unit. (§ 6 ch 40 SLA 1955)

Cross references. — For oil and gas rights of adjoining owners as to pumping leasing, see AS 38.05.180. oil. 5 ALR 421.

Collateral references. — Respective

**Sec. 31.05.110. Unitization and unitized operation of pools and integration of interests by agreement.** (a) To prevent, or to assist in preventing waste, to insure a greater ultimate recovery of oil and gas, and to protect the correlative rights of persons owning interests in the tracts of land affected, these persons may validly integrate their interests to provide for the unitized management, development, and operation of such tracts of land as a unit. Where, however, they have not agreed to integrate their interests, the commission, upon proper petition, after notice and hearing, has jurisdiction, power and authority, and it is its duty to make and enforce orders and do the things necessary or proper to carry out the purposes of this section.

(b) If upon the filing of a petition by or with the commission and after notice and hearing, all in the form and manner and in accordance with the procedure and requirements provided in this section, the commission finds that (1) the unitized management, operation and further development of a pool or portion of a pool is reasonably necessary in order to effectively carry on pressure control, pressure-maintenance or repressuring operations, cycling operations, water flooding operations, or any combination of these, or any other form of joint effort calculated to substantially increase the ultimate recovery of oil and gas from the pool; (2) one or more of the unitized methods of operation as applied to the pool or portion of it is feasible, and will prevent waste and will with reasonable probability result in the increased recovery of substantially more oil and gas from the pool than would otherwise be recovered; (3) the estimated additional cost, if any, of conducting such operations will not exceed the value of the additional oil and gas so recovered; and (4) the unitization and adoption of one or more of the unitized methods of operation is for the common good, it shall make a finding to that effect and make an order creating the unit and providing for the unitization and unitized operation of the pool or portion of it described in the order, upon the terms and conditions, as may be shown by the evidence to be fair, reasonable, equitable, and which are necessary or proper to protect, safeguard and adjust the respective rights and obligations of the several persons affected, including royalty owner, owners of overriding royalties, oil and gas payments, carried interests, mortgages, lien claimants and others, as well as the lessees. The petition shall set out a description of the proposed unit area with a map or plat of it attached, shall allege the existence of the facts required to be found by the commission as provided in this subsection and shall have attached to it a recommended plan of unitization applicable to the proposed unit area and which the petitioner considers to be fair, reasonable and equitable.

(c) The order of the commission shall define the boundary of the area to be included within the unit area and prescribe with reasonable

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detail the plan of unitization applicable to it. Each unit and unit area may be limited to all or a portion of a single pool. Only so much of a pool or pools as has been defined and determined to be productive on the basis of information available to the commission may be so included within the unit area. A unit may be created to embrace less than the whole of a pool only where it is shown by the evidence that the area to be so included within the unit area is of a size and shape as may be reasonably required for the successful and efficient conduct of the unitized method of operation for which the unit is created, and that the conduct of it will have no material adverse effect upon the remainder of the pool. The plan of unitization for each unit and unit area shall be one suited to the needs and requirements of the particular unit dependent upon the facts and conditions found to exist with respect to it. In addition to other terms, provisions, conditions and requirements found by the commission to be reasonably necessary or proper to carry out the purpose of this chapter, and subject to the further requirements of this section, each plan of unitization shall contain fair, reasonable and equitable provisions for

(1) the efficient unitized management or control of the further development and operation of the unit area for the recovery of oil and gas from the pool affected; under such a plan the actual operations within the unit area may be carried on in whole or in part by the unit itself, or by one or more of the lessees within the unit area as the unit operator subject to the supervision and direction of the unit, dependent upon what is most beneficial or expedient; the designation of the unit operator shall be by vote of the lessees in the unit in a manner provided in the plan of unitization and not by the commission;

(2) the division of interest or formula for the apportionment and allocation of the unit production, among and to the several separately owned tracts within the unit area such as will reasonably permit persons otherwise entitled to share in or benefit by the production from such separately owned tracts to produce and receive, instead thereof, their fair, equitable and reasonable share of the unit production or other benefits of it; a separately owned tract's fair, equitable, and reasonable share of the unit production shall be measured by the value of each such tract for oil and gas purposes and its contributing value to the unit in relation to like values of other tracts in the unit, taking into account acreage, the quantity of oil and gas recoverable from it, location on the structure, its probable productivity of oil and gas in the absence of unit operations, the burden of operations to which the tract will or is likely to be subjected, or so many of these factors, or such other pertinent engineering, geological or operating factors as may be reasonably susceptible of determination; "unit production" as that term is used in this chapter means all oil and gas produced from a unit area from the effective date of the order of the commission creating the unit regardless of the well or tract within the unit area from which the same is produced;

(3) the manner in which the unit and the further development and operation of the unit area shall or may be financed and the basis, terms and conditions on which the cost and expense of it shall be apportioned among and assessed against the tracts and interests made chargeable with it, including a detailed accounting procedure governing all charges and credits incident to such operations; upon terms and conditions as to time and rate of interest as may be fair to all concerned, reasonable provision shall be made in the plan of unitization for carrying or otherwise financing lessees who are unable to promptly meet their financial obligations in connection with the unit;

(4) the procedure and basis upon which wells, equipment and other properties of the several lessees within the unit area are to be taken over and used for unit operations, including the method of arriving at the compensation for it, or of otherwise proportionately equalizing or adjusting the investment of the several lessees in the project as of the effective date of unit operation;

(5) the creation of an operating committee to have general overall management and control of the unit and the conduct of its business and affairs and the operations carried on by it, together with the creation or designation of other subcommittees, boards or officers to function under the authority of the operating committee as may be necessary, proper or convenient in the efficient management of the unit, defining the powers and duties of all the committees, boards and officers, and prescribing their tenure and time and method for their selection;

(6) the time when the plan of unitization becomes effective;

(7) the time when and the conditions under which and the method by which the unit shall or may be dissolved and its affairs wound up.

(d) *[Repealed, § 17 ch 160 SLA 1978.]*

(e) Except as otherwise expressly provided in this section, all proceedings held under this chapter, including the filing of petitions, the giving of notices, the conduct of hearings and other action taken by the commission shall be in the form and manner and in accordance with the procedure provided in AS 31.05.040 — 31.05.060. Additional notice shall be given as the commission requires.

(f) From the effective date of an order of the commission creating a unit and prescribing the plan of unitization applicable to it, the operation of a well producing from the pool or portion of it within the unit area defined in the order by persons other than the unit or persons acting under its authority or except in the manner and to the extent provided in the plan of unitization is unlawful and is prohibited.

(g) The obligation or liability of the lessees or other owners of the oil and gas rights in the several separately owned tracts for the payment of unit expense shall at all times be several and not joint or

collective and in no event shall a lessee or other owner of the oil and gas rights in the separately owned tract be chargeable with, obligated or liable, directly or indirectly, for more than the amount apportioned, assessed or otherwise charged to that lessee's or owner's interest in the separately owned tract under the plan of unitization and then only to the extent of the lien provided for in this chapter.

(h) Subject to such reasonable limitations as may be set out in the plan of unitization, the unit has a first and prior lien upon the leasehold estate and all other oil and gas rights (exclusive of a landowners' royalty interest) in and to each separately owned tract, the interest of the owners in and to the unit production and all equipment in the possession of the unit, to secure the payment of the amount of the unit expense charged to and assessed against such separately owned tract. The interest of the lessee or other persons who by lease, contract or otherwise are obligated or responsible for the cost and expense of developing and operating a separately owned tract for oil and gas in the absence of unitization shall, however, be primarily responsible for and charged with any assessment for unit expense made against the tract and resort may be had to overriding royalties, oil and gas payments, or other interests, except royalty interests, which otherwise are not chargeable with these costs, only in the event the owner of interest primarily responsible fails to pay the assessment of the production to the credit thereof, or production is insufficient for that purpose. If the owner of any royalty interest, overriding royalty, oil or gas payment, or any other interest which under the plan of unitization is not primarily responsible for it pays in whole or in part the amount of an assessment for unit expense for the purpose of protecting such interest, or the amount of the assessment in whole or in part is deducted from the unit production to the credit of such interest, the owner of it is to the extent of the payment or deduction subrogated to all the rights of the unit with respect to the interest or interests primarily responsible for the assessment. The landowners' royalty share of the unit production allocated to each separately owned tract shall be regarded as royalty to be distributed to and among, or the proceeds of it paid to, the landowners, free and clear of all unit expense and free of any lien for it.

(i) Property rights, leases, contracts and all other rights and obligations shall be regarded as amended and modified to the extent necessary to conform to the provisions and requirements of this chapter, and to any valid and applicable plan of unitization or order of the commission made and adopted under this chapter, but otherwise remain in effect.

(j) Nothing contained in this chapter shall be construed to require a transfer to or vesting in the unit of title to the separately owned tracts or leases on them within the unit area, other than the right to use and operate them to the extent set out in the plan of unitization; nor shall

the unit be regarded as owning the unit production. The unit production and the proceeds from the sale of it shall be owned by the several persons to whom it is allocated under the plan of unitization. All property, whether real or personal, which the unit may in any way acquire, hold or possess, shall not be acquired, held or possessed by the unit for its own account but shall be acquired, held and possessed by the unit for the account and as agent of the several lessees and shall be the property of the lessees as their interests appear under the plan of unitization, subject, however, to the right of the unit to the possession, management, use or disposal of the same in the proper conduct of its affairs, and subject to any lien the unit may have on it to secure the payment of unit expense. Neither the unit production or proceeds of the sale of it, nor the other receipts shall be treated, regarded, or taxed as income or profits of the unit; but instead, all such receipts shall be the income of the several persons to whom or to whose credit the same are payable under the plan of unitization. To the extent the unit may receive or disburse the receipts it shall only do so as a common administrative agent of the persons to whom the receipts are payable.

(k) The amount of the unit production allocated to each separately owned tract within the unit, and only that amount, regardless of the well or wells in the unit area from which it may be produced and regardless of whether it is more or less than the amount of the production from the well or wells, if any, on any such separately owned tract, shall for all intents, uses and purposes be regarded and considered as production from the separately owned tract, and, except as may be otherwise authorized in this chapter, or in the plan of unitization approved by the commission, shall be distributed among or the proceeds of it paid to the persons entitled to share in the production from the separately owned tract in the same manner, in the same proportions, and upon the same condition that they would have participated and shared in the production or proceeds of it from such separately owned tract had not the unit been organized, and with the same legal effect. If adequate provisions are made for the receipt of it, the share of the unit production allocated to each separately owned tract shall be delivered in kind to the persons entitled to it by virtue of ownership of oil and gas rights in it or by purchase from the owners subject to the rights of the unit to withhold and sell the same in payment of unit expense under the plan of unitization, and subject further to the call of the unit on such portions of the gas for operating purposes as may be provided in the plan of unitization.

(l) An agreement or plan for the development and operation of a field or pool of oil or gas as a unit, if approved by the commission for the purpose of conserving oil or gas, does not violate a statute of the state prohibiting monopolies or acts, arrangements, agreements, contracts, combinations or conspiracies in restraint of trade or commerce.

(m) Operations carried on under and in accordance with the plan of unitization shall be regarded and considered as a fulfillment of a compliance with all of the provisions, covenants and conditions, express or implied, of the several oil and gas leases upon lands included within the unit area, or other contracts pertaining to the development of it insofar as the leases or other contracts may relate to the pool or portion of it included in the unit area. Wells drilled or operated on any part of the unit area no matter where located shall for all purposes be regarded as wells drilled on each separately owned tract within the unit area.

(n) Nothing in this section or in any plan of unitization shall be construed as increasing or decreasing the implied covenants of a lease in respect to a common source of supply or lands not included within the unit area of a unit.

(o) The unit area of a unit may be enlarged to include adjoining portions of the same pool, including the unit area of another unit, and a new unit created for the unitized management, operation and further development of the enlarged unit area, or the plan of unitization may be otherwise amended, or the unit area contracted, all in the same manner, upon the same conditions and subject to the same limitations as provided with respect to the creation of a unit in the first instance.

(p) An aliquot of unit production may be underlifted or overlifted from a unit established under this chapter or AS 38.05.180(p) only when it does not create waste, except the commissioner may permit underlifting or overlifting for temporary periods for the purpose of accommodating extraordinary disruptions to an interest owner's production disposal system. Underlifted oil may be recovered by an interest owner at a daily rate not to exceed 10 percent of the owner's working or royalty interest share of daily production at the time of underlift recovery. This subsection applies to all units created after June 30, 1978.

(q) This section applies to all involuntary units formed in the state. Subsections (a) and (g) — (p) of this section apply to all voluntary units formed in the state and to a voluntary cooperative or unit plan of development or operation entered into in accordance with AS 38.05.180(p). (§ 7 ch 40 SLA 1955; am §§ 8 — 13, 17 ch 160 SLA 1978; am § 33 ch 94 SLA 1980)

**Cross references.** — For provisions regarding oil and gas leasing, see AS 38.05.180.

**Legislative history reports.** — For conference committee letter of intent re-

lating to the 1978 repeal of subsection (d) (sec. 17, ch. 160, SLA 1978 — HB 815), see 1978 House Journal, p. 1720.

**Collateral references.** — Operator's or lessee's responsibility for production of oil

or gas in excess of allowance as affected by his ignorance of excess production or his failure to profit thereby. 150 ALR 1149.

**Sec. 31.05.120. Use of gas from well to manufacture carbon products without permit is prima facie waste.** The use of gas from a well producing gas only, or from a well which is primarily a gas well for the manufacture of carbon black or similar products predominantly carbon is declared to constitute waste prima facie, and the gas well shall not be used for this purpose unless it is clearly shown at a public hearing held by the commission, on application of the person desiring to use the gas, that waste would not take place by the use of the gas for the purpose applied for, and that gas which would otherwise be lost is now available for such purpose, and that the gas to be used cannot be used for a more beneficial purpose, such as for light or fuel purposes, except at prohibitive cost, and that it would be in the public interest to grant the permit. If the commission finds that the applicant has clearly shown a right to use the gas for the purpose applied for, it shall issue a permit upon terms and conditions it finds necessary in order to permit the use of the gas and at the same time require compliance with the intent of this section. (§ 8 ch 40 SLA 1955)

*Secs. 31.05.130 — 31.05.140. Levy of Tax and Disposition of Funds. [Repealed, § 2 ch 247 SLA 1970.]*

**Article 3. General Provisions.**

Section  
150. Penalties  
160. Injunctive relief

Section  
170. Definitions

~~Sec. 31.05.150. Penalties. (a) A person who wilfully violates a provision of this chapter, or a regulation or order of the commission adopted under this chapter is subject to a penalty of not more than \$1,000 for each act of violation and for each day that the violation continues, unless the penalty for violation is otherwise provided for and made exclusive in this chapter.~~

~~(b) If a person, for the purpose of evading this chapter, or any regulation or order of the commission adopted under this chapter, wilfully makes or has made a false entry in a record, account or memorandum required by this chapter, or by a regulation or order, or wilfully omits, or causes to be omitted, from a record, account or memorandum, full, true and correct entries as required by this chapter, or by a regulation or order, or removes from the state or destroys, mutilates, alters or falsifies such record, account or memo-~~

SEE  
Chpt. 86  
SLA 1990

~~random, the person is guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than \$5,000, or by imprisonment in jail for not more than six months, or by both.~~

(c) A person who knowingly aids or abets another person in the violation of any provision of this chapter, or a regulation or order of the commission adopted under this chapter is subject to the same penalty as that prescribed by this chapter for the violation by the other person.

(d) The penalties provided in this section are recoverable by suit filed by the attorney general in the name and on behalf of the commission in the superior court of the judicial district in which the defendant resides or in which any defendant resides, if there is more than one defendant, or in the superior court of the judicial district in which the violation occurs. The payment of a penalty does not relieve a person on whom the penalty is imposed from liability to any other person for damages arising out of the violation.

(e) The commission may impose a penalty payment on every 1,000 cubic feet of natural gas flared, vented or otherwise determined to be waste as defined in AS 31.05.170. The penalty shall be the fair market value of the natural gas at the point of waste. (§ 12 ch 40 SLA 1955; am § 1 ch 195 SLA 1968)

(f) SEE ChPT. 86 SLA 1990

Collateral references. — 58 C.J.S.  
Mines and Minerals § 241.

**Sec. 31.05.160. Injunctive relief.** (a) Whenever it appears that a person is violating or threatening to violate any provision of this chapter, or any regulation or order of the commission, the commission shall bring suit against that person in the superior court of the judicial district where the violation occurs or is threatened, to restrain the person from continuing the violation or from carrying out the threat of violation. In the suit, the court shall have jurisdiction to grant to the commission, without bond or otherwise undertaking, such prohibitory and mandatory injunctions as the facts warrant.

(b) If the commission fails to bring suit to enjoin a violation or threatened violation within 10 days after receipt of written request to do so by a person who is or will be adversely affected by the violation, the person making the request may bring suit to restrain the violation or threatened violation in the court in which the commission may bring suit. If the court finds that injunctive relief should be granted, the commission shall be made a party and shall be substituted for the person who brought the suit, and the injunction shall be issued as if the commission had at all times been the plaintiff. (§ 13 ch 40 SLA 1955)

Sec. 31.05.170. Definitions. In this chapter, unless the context otherwise requires

(1) "and" includes "or" and "or" includes "and";

(2) "correlative rights" mean the opportunity afforded, so far as it is practicable to do so, to the owner of each property in a pool to produce without waste the owner's just and equitable share of the oil or gas, or both, in the pool; being an amount, so far as can be practically determined, and so far as can practicably be obtained without waste, substantially in the proportion that the quantity of recoverable oil or gas, or both under the property bears to the total recoverable oil or gas or both in the pool, and for such purposes to use the owner's just and equitable share of the reservoir energy;

(3) "commission" means the Alaska Oil and Gas Conservation Commission;

(4) "cubic foot" of natural gas means the volume of gas contained in one cubic foot of space measured at a pressure base of 14.65 pounds per square inch absolute and a temperature base of 60 degrees Fahrenheit;

(5) "field" means a general area which is underlain or appears to be underlain by at least one pool, and includes the underground reservoir containing oil or gas; and the words "pool" and "field" mean the same thing when only one underground reservoir is involved, but "field" unlike "pool" may relate to two or more pools;

(6) "gas" includes all natural gas and all hydrocarbons produced at the wellhead not defined as oil;

(7) "landowner" means the owner of the subsurface estate of the tract affected;

(8) "oil" includes crude petroleum oil and other hydrocarbons regardless of gravity which are produced at the wellhead in liquid form and the liquid hydrocarbons known as distillate or condensate recovered or extracted from gas, other than gas produced in association with oil and commonly known as casinghead gas;

(9) "owner" means the person who has the right to drill into and produce from a pool and to appropriate the oil and gas the person produces from a pool for that person and others;

(10) "person" includes a natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary or other representative of any kind, and includes a department, agency or instrumentality of the state or a governmental subdivision of the state;

(11) "pool" means an underground reservoir containing, or appearing to contain, a common accumulation of oil or gas. Each zone of a general structure which is completely separated from any other zone in the structure is covered by the term "pool";

(12) "producer" means the owner of a well or wells capable of producing oil or gas or both;

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(13) "regular production" means continuing production of oil or gas from a well into production facilities and transportation to market, but does not include short term testing, evaluation, or experimental pilot production activities that have been approved by permit or order of the commission;

(14) "waste" means, in addition to its ordinary meaning, "physical waste" and includes

(A) the inefficient, excessive, or improper use of, or unnecessary dissipation of, reservoir energy; and the locating, spacing, drilling, equipping, operating or producing of any oil or gas well in a manner which results or tends to result in reducing the quantity of oil or gas to be recovered from a pool in this state under operations conducted in accordance with good oil field engineering practices;

(B) the inefficient above-ground storage of oil; and the locating, spacing, drilling, equipping, operating or producing of an oil or gas well in a manner causing, or tending to cause, unnecessary or excessive surface loss or destruction of oil or gas;

(C) producing oil or gas in a manner causing unnecessary water channeling or coning;

(D) the operation of an oil well with an inefficient gas-oil ratio;

(E) the drowning with water of a pool or part of a pool capable of producing oil or gas, except insofar as and to the extent authorized by the commission;

(F) underground waste;

(G) the creation of unnecessary fire hazards;

(H) the release, burning, or escape into the open air of gas, from a well producing oil or gas, except to the extent authorized by the commission;

(I) the use of gas for the manufacture of carbon black, except as provided in this chapter;

(J) the drilling of wells unnecessary to carry out the purpose or intent of this chapter. (§ 2 ch 40 SLA 1955; am §§ 2, 3 ch 195 SLA 1968; am §§ 14, 15 ch 160 SLA 1978; am § 3 ch 91 SLA 1984)

Revisor's notes. — Reorganized in 1984 to alphabetize the defined terms.

Effect of amendments. — The 1984 amendment inserted paragraph (13).

## Chapter 168

28.40.100(a)  
(1)

(1) "cancel" means to annul or terminate, (THE ANNULMENT OR TERMINATION) by formal action of the department, [OF] a certification, registration, license, permit or privilege issued or allowed under this title or regulations adopted under this title, because of an error or defect in the document issued or the application for issuance or because the person holding the document is no longer entitled to it;

31.05.007(a)

\* Sec. 10. AS 31.05.007(a) is amended to read:

(a) The term of office of each member is six years. (THE GOVERNOR SHALL DESIGNATE WHO AMONG THE INITIAL APPOINTEES SHALL SERVE RESPECTIVELY FOR TERMS OF TWO YEARS, FOUR YEARS AND SIX YEARS.) A commissioner, upon the expiration of a term, shall continue to hold office until a successor is appointed and qualified.

36.30.015(e)

\* Sec. 11. AS 36.30.015(e) is amended to read:

(e) The boards of directors of the Alaska Railroad Corporation and the Alaska State Housing Authority shall adopt procedures to govern the procurement of supplies, services, professional services, and construction [BY THE CORPORATION]. The procedures must be substantially equivalent to the procedures prescribed in this chapter and in regulations adopted under this chapter.

39.20.190

\* Sec. 12. AS 39.20.190 is amended to read:

Sec. 39.20.190. DEFINITIONS. In AS 39.20.110 - 39.20.190 [AS 39.20.110 - 39.20.170]

(1) "employee" or "state employee" means a person employed by a state agency;

(2) "official" or "state official" means the appointive head of a state agency;

(3) "official travel" means travel inside or outside the state on official business of the state, for which payment or

## Chapter 86

## AN ACT

## Relating to the Alaska Oil and Gas Conservation Commission.

\* Section 1. AS 31.05.027 is amended to read:

Sec. 31.05.027. LAND SUBJECT TO COMMISSION'S AUTHORITY. The authority of the commission applies to all land in the state lawfully subject to its police powers, including [. IT APPLIES TO] land of the United States and [OR TO] land subject to the jurisdiction of the United States [ONLY TO THE EXTENT THAT CONTROL AND SUPERVISION OF CONSERVATION OF OIL AND GAS AND PREVENTION OF WASTE BY THE UNITED STATES ON ITS LAND FAILS TO CARRY OUT THE INTENT AND PURPOSES OF THIS CHAPTER, AND OTHERWISE APPLIES TO FEDERAL LAND SO FAR AS AN OFFICER OF THE UNITED STATES HAVING JURISDICTION, OR AN AUTHORIZED REPRESENTATIVE, SHALL APPROVE ANY OF THE PROVISIONS OF THIS CHAPTER OR ORDERS OF THE COMMISSION WHICH AFFECT LAND]. The authority of the commission further applies to all land included in a voluntary cooperative or unit plan of development or operation entered into in accordance with AS 38.05.180(p).

31.05.027

\* Sec. 2. AS 31.05.150(a) is amended to read:

(a) A person who negligently [WILFULLY] violates a provision of this chapter, or a regulation or order of the commission adopted under this chapter, is liable for [SUBJECT TO] a civil penalty of no [NOT] more than \$5,000 a day [\$1,000] for each day [ACT] of violation [AND FOR EACH DAY THAT THE VIOLATION CONTINUES], unless the penalty for

31.05.150(a)

Chapter 86

1 violation is otherwise provided for and made exclusive in this chap-  
2 ter.

31.05.150(b)

3 \* Sec. 3. AS 31.05.150(b) is amended to read:

4 (b) A [IF A] person who, for the purpose of evading this chapter  
5 [.] or any regulation or order of the commission adopted under this  
6 chapter, knowingly commits an act specified in AS 11.46.630(a) is  
7 guilty of a class A misdemeanor [WILFULLY MAKES OR HAS MADE A FALSE  
8 ENTRY IN A RECORD, ACCOUNT OR MEMORANDUM REQUIRED BY THIS CHAPTER, OR  
9 BY A REGULATION OR ORDER, OR WILFULLY OMITTS, OR CAUSES TO BE OMITTED,  
10 FROM A RECORD, ACCOUNT OR MEMORANDUM, FULL, TRUE AND CORRECT ENTRIES  
11 AS REQUIRED BY THIS CHAPTER, OR BY A REGULATION OR ORDER, OR REMOVES  
12 FROM THE STATE OR DESTROYS, MUTILATES, ALTERS OR FALSIFIES SUCH RE-  
13 CORD, ACCOUNT OR MEMORANDUM, THE PERSON IS GUILTY OF A MISDEMEANOR,  
14 AND UPON CONVICTION IS PUNISHABLE BY A FINE OF NOT MORE THAN \$5,000,  
15 OR BY IMPRISONMENT IN JAIL FOR NOT MORE THAN SIX MONTHS, OR BY BOTH].

31.05.150(f)

16 \* Sec. 4. AS 31.05.150 is amended by adding a new subsection to read:

17 (f) A person who knowingly violates a regulation or order of the  
18 commission is guilty of a misdemeanor punishable by a fine of no more  
19 than \$5,000 a day for each day of violation.

Eff. 9/2/90

**Sec. 38.05.036. Audit of royalty and net profit payments.**

(a) The Department of Revenue shall audit reports, payments, and payments due relating to royalty and net profits under oil and gas contracts, agreements, or leases under this chapter.

(b) The Department of Revenue may inspect all reports and other information filed in support of or relating to royalty and net profits payments, whether or not that information is confidential, and shall hold that information confidential to the extent required under oil and gas agreements, contracts, or leases, or by this chapter or AS 43.05.230.

(c) All information obtained by the Department of Revenue relating to royalty and net profits payments, including information obtained under AS 43, may be made available to the department, in the form of summaries and, when in furtherance of the department's royalty and net profits functions, relevant portions of the audits. Information made available to the department that was obtained under AS 43 is confidential and subject to the provisions of AS 43.05.230.

(d) The Department of Revenue may conduct audits under this section concurrently with audits or investigations under AS 43, and may use information obtained from the department in tax audits, investigations, or proceedings under AS 43.

(e) In this section, "audit" means the process of obtaining sufficient competent evidentiary matter through inspection, observation, inquiry, and confirmation to afford a reasonable basis for ascertaining the compliance by the subject of the audit with the applicable law, regulation, lease, agreement, and contract terms; it does not include any other actions necessary to administer this chapter pertaining to oil and gas royalty and net profits payments, including daily accounting functions, certification procedures associated with those accounting functions, and enforcement of payments of royalties and net profits. (§ 2 ch 61 SLA 1980)

Article 2. Department of Environmental Conservation.

Section	Section
20. Powers of the department	supply, sewage, and solid waste facilities grants
25. Accounting and disposition of fees	32. Alaska clean water fund.
30. Water quality enhancement, water	40. Alaska environmental plan

Collateral references. — 61A Am. Jur. 2d, Pollution Control, § 6.  
 39A C.J.S., Health and Environment, §§ 5, 9-15, 125-145.  
 Power of state to prohibit or restrict exportation of natural resources. 32 ALR 331.  
 Preservation or protection of animals or

birds as subject of charitable trust. 66 ALR 465.  
 Constitutionality of reforestation or forest conservation legislation. 13 ALR2d 1095.  
 Right to maintain action to enjoin public nuisance as affected by existence of pollution control agency. 60 ALR3d 665.

Sec. 46.03.020. Powers of the department. The department may

- (1) enter into contracts necessary or convenient to carry out the functions, powers and duties of the department;
- (2) review and appraise programs and activities of state departments and agencies in light of the policy set out in AS 46.03.010 for the purpose of determining the extent to which the programs and activities are contributing to the achievement of that policy and to make recommendations to the departments and agencies, including but not limited to, environmental guidelines;
- (3) consult with and cooperate with
  - (A) officials and representatives of any nonprofit corporation or organization in the state;
  - (B) persons, organizations and groups, public and private, using, served by, interested in or concerned with the environment of the state;
- (4) appear and participate in proceedings before any state or federal regulatory agency involving or affecting the purposes of the department;
- (5) undertake studies, inquiries, surveys or analyses it may consider essential to the accomplishment of the purposes of the department; these activities may be carried out by the personnel of the department or in cooperation with public or private agencies, including educational, civic and research organizations, colleges, universities, institutes and foundations;
- (6) at reasonable times enter and inspect with the consent of the owner or occupier any property or premises to investigate either actual or suspected sources of pollution or contamination or to ascertain compliance or noncompliance with a regulation which may be adopted under AS 46.03.020 — 46.03.040; information relating to secret pro-

cesses or methods of manufacture discovered during investigation is confidential;

(7) conduct investigations and hold hearings and compel the attendance of witnesses and the production of accounts, books and documents by the issuance of a subpoena;

(8) advise and cooperate with municipal, regional and other local agencies and officials in the state, to carry out the purposes of this chapter;

(9) act as the official agency of the state in all matters affecting the purposes of the department under federal laws now or hereafter enacted;

(10) adopt regulations necessary to effectuate the purposes of this chapter, including, by way of example and not limitation, regulations providing for

(A) control, prevention and abatement of air, water, or land or sub-surface land pollution;

(B) safeguard standards for petroleum and natural gas pipeline construction, operation, modification or alteration;

(C) protection of public water supplies by establishing minimum drinking water standards, and standards for the construction, improvement, and maintenance of public water supply systems;

(D) collection and disposal of sewage and industrial waste;

(E) collection and disposal of garbage, refuse, and other discarded solid materials from industrial, commercial, agricultural and community activities or operations;

(F) *[Repealed, § 12 ch 172 SLA 1978.]*

(G) control of pesticides;

(H) other purposes as may be required for the implementation of the policy declared in AS 46.03.010;

(I) handling, transportation, treatment, storage, and disposal of hazardous wastes;

(11) after consultation with other state agencies and local government officials, identify and propose for additional or deletion, by regulation, other licenses, permits or authorizations for which the provisions of AS 46.35 are applicable, and report annually to the legislature the permits which have been included or deleted;

~~(12) deposit environmental service fees into an account in the general fund;~~

(13) inspect the premises of sellers and suppliers of paint, vessels, and marine and boating supplies, and take other actions necessary to enforce AS 46.03.715. (§ 3 ch 120 SLA 1971; am § 1 ch 220 SLA 1976; am § 2 ch 60 SLA 1977; am § 12 ch 172 SLA 1978; am § 8 ch 93 SLA 1981; am § 86 ch 138 SLA 1986; am § 1 ch 67 SLA 1987)

## Chapter 36

1 under AS 47.25.120 - 47.25.300 (general relief), AS 47.25.310 - 47.-  
 2 25.420 (aid to families with dependent children), AS 47.25.430 -  
 3 47.25.615 (adult public assistance), and AS 47.25.975 - 47.25.990  
 4 (food stamps) shall be remitted to the Department of Revenue under  
 5 AS 37.10.050(a).

Repealer

6 \* Sec. 92. AS 10.15.535, 10.15.540; AS 14.56.035; AS 14.57.015; AS 16.-  
 7 05.053; AS 37.05.500(a)(1), 37.05.500(a)(4), 37.05.500(a)(6); AS 44.42.025;  
 8 AS 44.83.195(c); and AS 46.03.020(12) and 46.03.025 are repealed.

9 \* Sec. 93. Notwithstanding AS 37.10.050(a), as amended by sec. 1, ch.  
 10 138, SLA 1986, a fee charged by an agency under a regulation that was  
 11 adopted before July 1, 1987, under authority of a statute that does not  
 12 expressly authorize a charge for a service, is valid if it would have been  
 13 valid before the 1986 amendment of AS 37.10.050(a). The regulation and fee  
 14 remain in effect, and the agency may charge for the service, until the  
 15 regulation is repealed or amended by the agency. To amend the regulation  
 16 to change the fee, the agency shall meet the standard of AS 37.10.050(a) as  
 17 amended by sec. 2 of this Act.

18 \* Sec. 94. Notwithstanding AS 37.10.050(a), as amended by sec. 2 of  
 19 this Act, a fee charged under a regulation that was adopted before the  
 20 effective date of this Act that establishes a fee or other charge that  
 21 exceeds the estimated actual cost to a state agency in administering the  
 22 activity or providing the service for which the fee or charge is imposed is  
 23 valid if it would have been valid before the effective date of this Act.  
 24 The regulation and fee or charge remain in effect, and the agency may  
 25 collect the fee or charge for the activity or service, until (1) the regu-  
 26 lation is repealed or amended, or (2) two years after the effective date of  
 27 this Act, whichever is sooner. If the regulation is amended to change the  
 28 fee or charge, AS 37.10.050(a), as amended by sec. 7 of this Act, applies  
 29 to the fee or charge.

[CONFORMED COPY]

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AGREEMENT  
FOR THE OPERATION AND MAINTENANCE  
OF THE  
TRANS ALASKA PIPELINE SYSTEM

BY AND AMONG

AMERADA HESS PIPELINE CORPORATION

ARCO PIPE LINE COMPANY

BP PIPELINES INC.

EXXON PIPELINE COMPANY

MOBIL ALASKA PIPELINE COMPANY

PHILLIPS PETROLEUM COMPANY

SOHIO PIPE LINE COMPANY

AND

UNION ALASKA PIPELINE COMPANY

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6.7 Other Plans of Operation. Nothing in Section 6.2 hereof shall be deemed to prohibit Owners from participating in any plan of operation required, approved, or permitted by any governmental authority having jurisdiction in accordance with any valid and applicable order, rule, regulation and/or law, and which is not inconsistent with any other provision hereof or the TAPS Agreement.

## SECTION 7

### OPERATING PROCEDURES

#### 7.1 Quality and Intermixing of Petroleum.

(a) Only Petroleum will be accepted for transportation in the System. All Petroleum transported through the System will be intermixed with other Petroleum shipments and shall be subject to such changes in gravity, quality and other characteristics as may result from such intermixing. No person shall be entitled to receive the identical Petroleum delivered into the System. Delivery shall be out of the commingled stream or common stock. In order to insure that no shipper will be materially damaged or benefited by changes in gravity, quality or other characteristics due to intermixing in the System, each Owner will require shippers tendering it Petroleum for transportation in its undivided interest in the System to participate in just and nondiscriminatory adjustments among all shippers in the System for changes in gravity, quality and certain other characteristics which materially affect the value of Petroleum transported in the System. The Owners by agreement will establish, or cause to be established, a system for such adjustments (herein referred to as Quality Bank).

(b) Petroleum will not be accepted for transportation in the System unless (i) it is suitable for refining or use as a fuel and contains no more than one-half of 1% (0.5%) by volume of basic sediment and water [with the water being limited to two-tenths of 1% (0.2%)], (ii) its temperature does not exceed 140°F, (iii) its hydrogen sulfide (H<sub>2</sub>S) content in solution does not exceed 50 parts per million by weight, and (iv) it will not result in the calculated combined stream of Petroleum in the System under the custody of each Owner at any given entry point in the System at any given time exceeding ten (10) parts per million hydrogen sulfide (H<sub>2</sub>S) content in solution by weight, or the vapor pressure of such combined stream exceeding the greater of atmospheric pressure or 14.7 psia at receipt temperature. In calculating the above specified characteristics of the combined stream of Petroleum at any given entry point in the System under the custody of each Owner only Petroleum delivered into the System by that Owner at the point and all points upstream shall be considered. In no event will Petroleum be accepted for transportation in the System unless its gravity, viscosity, pour point, vapor pressure and other characteristics are such that it is readily susceptible to safe and efficient transportation through the System and will not materially affect the characteristics of other Petroleum shipments for which adjustments are not or will not be available through the Quality Bank.

(c) Before any Petroleum will be accepted for transportation through the System which is from any producing reservoir or processing plant from which Petroleum has not previously been accepted for transportation, the Owner to whom such Petroleum is tendered shall give the Operator and all other Owners written notice thereof at least thirty (30) days prior to its actual acceptance. Such notice shall include a suitable assay of the tendered Petroleum and Operator's advice as to the ability of the System to handle and transport such Petroleum safely and efficiently. During such thirty (30) day period each Owner shall advise Operator of any objections to the acceptance of such Petroleum solely on the basis of anticipated damage to the System or damage to the commingled stream of a kind for which just and reasonable compensation cannot be obtained through the Quality Bank. If any Owner so objects, the matter shall be referred to the Owners through the Owners Committee for resolution.

7.2 Measurements of Receipts and Deliveries of Petroleum. Operator shall ascertain and record the quantity and quality of Petroleum received into and delivered out of the System as follows:

(a) *Quantity Measurements.*

(i) *Meters.* Custody transfer measurement of all receipts into and deliveries out of the System shall be by meters except in instances where meters may not be operable or otherwise available in which case an alternate method provided for in the Oil Measurements Manual shall be used.

(ii) *Calibration of Meters.* Operator shall calibrate or cause to be calibrated, in accordance with the Oil Measurements Manual, all tanks, meters, and meter provers to be used in the operation of the System, and at the reasonable request of any Owner, Operator will confirm the accuracy of existing meter prover base volumes and tank tables used in connection with the System.

(b) *Quality and Characteristic Analysis.* Basic sediment and water (BS&W), temperature, gravity, and other Petroleum quality tests shall be made by Operator in accordance with the Oil Measurements Manual.

(c) *Reporting to Owners.* Operator shall report to each Owner for all Petroleum received into and delivered out of the System for the account of such Owner on the basis of standards set forth in the Oil Measurements Manual.

7.3 *Petroleum Losses and Gains.* All losses and gains of Petroleum from or in the System shall be allocated by Operator among the Owners as hereinafter set forth:

(a) The total amount of any loss of Petroleum in the Pipeline exceeding 4,000 Barrels occasioned by or resulting from any single identifiable event shall be allocated among all Owners based on their Percentage of Ownership in the Pipeline at the time the loss occurs.

(b) The total amount of any loss of Petroleum in Terminal Tankage exceeding 4,000 Barrels occasioned by or resulting from any single identifiable event shall be allocated among all Owners in the proportion that the Petroleum in the custody of each Owner in Terminal Tankage at the beginning of the Day on which the loss occurs bears to total Petroleum held in Terminal Tankage at the beginning of that Day.

(c) All gains and all other losses of Petroleum in the System or extractions from Petroleum in topping plants shall be allocated among all Owners in the proportion that the total 100 Barrel-Mile Deliveries for each Owner's account bears to the total of all 100 Barrel-Mile Deliveries. Operator shall make such allocations monthly, but the cumulative net amount of such gains, losses or extractions shall be adjusted monthly on a Calendar-Year-to-Date basis within a Calendar Year.

7.4 *Scheduling and Use of the System.* Each Owner's right to transport Petroleum through the System shall be in accordance with its Percentage of Ownership in the Pipeline. No Owner may receive into or transport through the System a Volume of Petroleum in excess of its Actual Daily Pipeline Capacity. No Owner may deliver out of the System a Volume of Petroleum in excess of the amount of Petroleum held in that Owner's Working Inventory and Owner's Base Inventory. Each Owner shall first deliver out of the System Petroleum held in its Owner's Working Inventory and may thereafter deliver Petroleum held in its Owner's Base Inventory provided:

(i) the lifting was included in the Lifting Schedule, or will not adversely affect the scheduled lifting of any other Owner.

(ii) the lifting will not impair the minimum required inventory operating levels as determined by Operator.

(iii) the lifting Owner's Base Inventory at the commencement of each such lifting is equal to the Volume of Base Inventory such Owner is obligated to provide under Section 7.6 hereof.

The throughput capacity of the System will vary from time to time because of variations in the gravity, viscosity and other characteristics of the Petroleum handled, deviations from full operability at design rates of all System facilities including but not limited to equipment failure, unplanned shutdown and other factors which may cause the actual throughput capacity of the System to deviate from design capacity. In order to insure that each Owner has the opportunity to schedule and use its Actual Daily Pipeline Capacity, Owners agree that the scheduling and use of the System shall be in accordance with the following provisions:

(a) *Scheduling and Use of the Pipeline.* By notice no later than two (2) Weeks prior to the Week of the anticipated Date of Commissioning and Weekly after such first notice, Operator will advise each Owner of the Estimated Daily Pipeline Capacity for each Owner for the six-Week period commencing two Weeks after the date of such notice. By notice no later than one (1) Week prior to the commencement of such six-Week period and Weekly after such first notice, each Owner will advise Operator of its throughput schedule for the six-Week period, commencing one Week after the date of such notice. Any Owner may at any time revise its schedule provided that no Owner shall schedule or deliver into the System more Petroleum than can be transported in such Owner's Estimated Daily Pipeline Capacity. Any Owner's failure for any reason to use fully its Estimated Daily Pipeline Capacity shall not thereafter entitle it to schedule or use capacity in excess of its Estimated Daily Pipeline Capacity.

(b) *Scheduling and Use of Terminal.*

(i) *Scheduling of Liftings and Vessels.* By notice no later than one (1) Week prior to the Week that any Owner expects to commence lifting Petroleum at the Terminal and Weekly after such first notice, each Owner will advise Operator of the schedule of Vessels it expects to call at the Terminal during the six-Week period commencing one (1) Week after such notice specifying for each Vessel scheduled during the first Week of such six-Week schedule and to the extent possible for the last five Weeks, the Volume to be lifted, name, size, place of registry, Scheduled Arrival Day, and such other information as required by the Port Information Manual. All Vessels scheduled by each Owner must be able to comply, and the party responsible for its operation shall comply, with the Port Information Manual.

(ii) *Preparation of Lifting Schedule.* Within twenty-four (24) hours from the time Owners are required to provide the above Vessel and lifting schedule information, Operator shall prepare and submit to each Owner a preliminary composite schedule of such information together with projected daily Working Inventory for the applicable six-Week period. If there are more proposed liftings on any Day during the first Week of such six-Week period than can be accommodated by the Terminal and such conflicts cannot be resolved voluntarily between the conflicting Owners, Operator shall resolve such conflicts by giving priority to Vessels whose Scheduled Arrival Day has been included in the Lifting Schedule the longest. If after applying the above rule there are still more such proposed liftings on any Day than can be accommodated, Operator will resolve remaining conflicts based on the following rules:

A. when Working Inventory is projected by Operator to exceed seventy-five percent (75%) of Working Capacity on the Day of such conflicts, Operator will give priority to Vessels scheduling the largest lifting,

B. when Working Inventory is projected Operator to be below twenty percent (20%) of Working Capacity on the Day of such conflicts, Operator will give priority to the Vessels scheduled by the Owner with the highest Volume of Working Inventory,

C. when Working Inventory is projected by Operator to be between twenty percent (20%) and seventy-five percent (75%) inclusive of Working Capacity on the Day of such conflicts, Operator will give priority to Vessels scheduled by the Owner with the highest percent of Owner's Working Capacity utilization.

After resolution of all conflicts in accordance with the above rules, the Lifting Schedule then established shall be issued to each Owner.

(iii) *Revision of Lifting Schedule.* Any changes may be made to the Lifting Schedule established in 7.4(b)(ii) by any Owner upon written notice to Operator at least seven (7) days in advance of a scheduled lifting subject to the scheduling priority rules provided for in Section 7.4(b)(ii). Changes with less than such seven (7) days notice may be made only in accordance with the following rules.

A. Vessel substitutions may be made at any time by notice to the Operator provided such substitution will not adversely affect any other Owner's scheduled liftings and the substituted Vessel complies with the Port Information Manual.

B. Any other changes and revisions may be made at any time provided,

1. the requested change or revision will not affect a lifting scheduled by any other Owner unless such other Owner's prior written consent is obtained, and

2. the requested change or revision will not, based on the Lifting Schedule, result in a projected Working Inventory in excess of seventy-five percent (75%) of Working Capacity within the next seven (7) Days or aggravate a Working Capacity condition which is already above such inventory level.

(iv) *Notice of Revised Lifting Schedule.* When a revision or change is made to the Lifting Schedule in accordance with 7.4(b)(iii) above, the Operator will promptly notify all the Owners of the revised Lifting Schedule and the effective date of the revision.

(c) *Failure to Comply with Lifting Schedule.*

(i) If a Vessel has not established an Actual Arrival Time within one (1) Day after such Vessel's Scheduled Arrival Day, the Owner scheduling such Vessel shall be charged (by way of a debit to its Operating Expense account) a penalty of five cents (5¢) per Barrel on ninety percent (90%) of the Volume scheduled to be lifted by such Vessel for each Day after the expiration of the time provided for above, when, at the beginning of that Day;

A. Working Inventory exceeds seventy-five percent (75%) of Working Capacity, and

B. such scheduled Vessel, a substitute Vessel or any other scheduled Vessel nominated to lift the scheduled Volume has not established an Actual Arrival Time.

(ii) If a vessel which has established an Actual Arrival Time does not lift at least ninety percent (90%) of the Volume scheduled to be lifted by such Vessel, the Owner scheduling such Vessel shall be charged (by way of a debit to its Operating Expense account) a penalty of five cents (5¢) on each Barrel less than ninety percent (90%) of the Volume scheduled to be lifted by such Vessel which remains unlifted at the beginning of each Day after the Day the Vessel completes its lifting, when, at the beginning of such Day;

A. Working Inventory exceeds seventy-five percent (75%) of Working Capacity, and

B. a substitute Vessel or any scheduled Vessel nominated to lift the unlifted Volume has not established an Actual Arrival Time.

(iii) Any penalty charged to an Owner under (i) or (ii) above shall be allocated to the other Owners (by way of a credit to their Operating Expense accounts) in the proportion that each such other Owner's Working Capacity not being used by each such Owner at the beginning of the Day the penalty is applied bears to the total Working Capacity not being used by all such Owners at the beginning of that Day.

(iv) Any delays in establishing an Actual Arrival Time due to:

A. any act or omission of Operator, or

B. any local event or condition of general application not within the control of Operator, the Owner scheduling such Vessel or any other person responsible for the operation or control of such Vessel

which act, event or condition does or would prevent all Vessels from establishing an Actual Arrival Time shall be subtracted from a Vessel's Actual Arrival Time in determining the time a Vessel would have but for such delay established an Actual Arrival Time under (i) or (ii) above.

(v) In addition, the penalty for failure to lift ninety percent (90%) of scheduled Volume provided for in (ii) above shall not be applied when such failure is due to

A. any act or omission of Operator, or

B. any local event or condition of general application (except mechanical equipment malfunction on the Vessel) not with the control of Operator, the Owner scheduling the Vessel or any other person responsible for the operation or control of such Vessel

which act, event or condition prevents that Vessel from lifting ninety percent (90%) of the Vessel's scheduled lifting.

(d) *Docks.*

(i) *Assignment of Dock Space.* Vessels shall be assigned dock space by Operator in the order of Actual Arrival Time. Provided, however, that Vessels establishing an Actual Arrival Time more than one Day prior to their Scheduled Arrival Day shall be assigned dock space by Operator earlier than one Day prior to their Scheduled Arrival Day only if such earlier assignment will not interfere with the docking of Vessels establishing an Actual Arrival Time on or one Day prior to their Scheduled Arrival Day. Each Vessel shall dock when and as instructed by Operator. If any Vessel is unable to dock when instructed, Operator shall dock the next Vessels waiting to be docked based on the order of dock assignment until the Vessel that was unable to dock is able to dock.

(ii) *Lifting Time.* After a Vessel has been docked, it shall be allowed twenty-four (24) hours from the time that Operator gives notice of readiness to commence either loading or deballasting within which to complete its lifting and to release its last line from a mooring point at the dock. If any Vessel fails to release its last mooring line before a specified departure time contained in a notice from Operator (which specified departure time shall not be earlier than the end of such twenty-four (24) hour period, nor earlier than four (4) hours after Operator transmits such notice to the Vessel), the Owner scheduling such Vessel shall thereafter pay a penalty of Two Thousand Dollars (\$2,000) for each hour or part thereof such Vessel remains at the dock, while such dock is required to load another Vessel which has established an Actual Arrival Time. The Operating Expense account of the Owner incurring the penalty shall be debited with the full amount of any such penalty and the Operating Expense accounts of all other Owners shall be credited with a pro rata share of such penalty prorated on the basis of the Percentages of Ownership of the Pipeline of such other Owners.

Any delay due to:

A. any act or omission of Operator, or

B. a local event or condition of general application (except mechanical equipment malfunction on the Vessel) not within the control of Operator, the Owner scheduling the Vessel or any other person responsible for the operation or control of such Vessel

which act, event or condition prevents the Vessel from vacating the docks shall be added to the time until a Vessel is required to vacate the dock.

(e) *Working Capacity.* If, at the beginning of any Day, Working Inventory equals or exceeds seventy-five percent (75%) of Working Capacity and any Owner's Working Inventory is in excess of such Owner's Working Capacity, such Owner shall be charged a penalty of Twenty Cents (20¢) per Day per Barrel for each Barrel in such Owner's Working Inventory in excess of such Owner's Working Capacity. The Operating Expense account of the Owner incurring the penalty shall be debited with the full amount of any such penalty and the Operating Expense accounts of the other Owners shall be credited with an amount determined by multiplying the total amount of the penalty for any Day by a percentage determined for each Owner by dividing the amount of that Owner's Working Capacity at the beginning of that Day not being used by it by the aggregate of all Owner's Working Capacity at the beginning of that Day not being used by its Owner. In calculating the penalty under this Section 7.4(e), the number of excess Barrels at the beginning of any Day shall be reduced by

(i) the number of Barrels scheduled to be lifted by a Vessel which has established an Actual Arrival Time at the beginning of any Day the penalty is applied but is unable to dock because the passage through Prince William Sound or Valdez Arm is closed to shipping due to an event or condition not within the control of the Owner incurring the penalty, and

(ii) the number of Barrels scheduled to be lifted by a Vessel which has docked but is unable to lift at the beginning of any Day due to any act or omission of Operator or due to any local event or condition of general application not within the control of Operator, the Owner scheduling such Vessel or any person responsible for the operation or control of such Vessel which does or would prevent all Vessels from loading.

7.5 *Manuals.* Owners will arrange for the preparation of all manuals referred to in this Operating Agreement and such other manuals as are required for the safe and efficient operation of the System, or the administration of this Operating Agreement or which are required by any applicable law, regulation or agreement. Any such manuals or changes thereto shall be approved by the Owners through the Owners Committee. If there are any conflicts between the provisions of such manuals and the terms of this Operating Agreement, this Operating Agreement shall control.

7.6 *Base Inventory.* Each Owner shall provide or cause to be provided a Volume of Petroleum for Pipeline Base Inventory as required to begin and maintain the operation of the System equivalent to its Percentage of Ownership in the Pipeline multiplied by the total Volume of Petroleum required for Pipeline Base Inventory. Each Owner shall also provide or cause to be provided a Volume of Petroleum for Terminal Tankage Base Inventory as required to begin and maintain the operation of the System equivalent to its Percentage of Ownership in the Terminal Tankage multiplied by the total Volume of Petroleum required for Terminal Tankage Base Inventory. Operator shall give written notice to each Owner specifying the time or times after such notice that each Owner will be required to provide its share of Base Inventory required to commence operations. Subject to the lifting of Base Inventory as provided in Section 7.4 each Owner shall provide Base Inventory required to maintain its share when and as requested by Operator. If any Owner fails to provide its share of Base Inventory when and as requested by Operator, Operator may acquire the same and charge the cost thereof to the account of such Owner.

7.7 *Transfers of Petroleum Within the System.* Except as may result from a sale, transfer or assignment of an Owners interest in the System covered in Section 13 hereof, no Owner shall transfer its custodial responsibility for Petroleum within the System. Operator shall only account for transfers of Petroleum as a ticket transaction at receipt and delivery points.

7.8 *Connections to the Pipeline.* All connections made to the Pipeline shall be owned by the Owners in accordance with their Percentages of Ownership in the Pipeline. Connections shall be made to the Pipeline in accordance with all applicable laws and regulations and in accordance with standards and procedures which may be adopted by the Owners through the Owners Committee from time to time for the safe and efficient operation of the Pipeline.

FIRST AMENDMENT  
TO  
AGREEMENT FOR THE  
OPERATION AND MAINTENANCE OF  
THE TRANS ALASKA PIPELINE SYSTEM

THIS FIRST AMENDMENT to the Agreement for the Operation and Maintenance of the Trans Alaska Pipeline System, entered into as of September 1, 1978 by and among Amerada Hess Pipeline Corporation, a Delaware corporation, ARCO Pipe Line Company, a Delaware corporation, BP Pipelines Inc., a Delaware corporation, Exxon Pipeline Company, a Delaware corporation, Mobil Alaska Pipeline Corporation, a Delaware corporation, Phillips Alaska Pipeline Corporation, a Delaware corporation, Sohio Pipe Line Company, a Delaware corporation, and Union Alaska Pipeline Company, a California corporation, herein called "Owners":

W I T N E S S E T H :

WHEREAS Owners or their predecessors in interest in the Trans Alaska Pipeline System entered into that certain agreement entitled "Agreement for the Operation and Maintenance of the Trans Alaska Pipeline System" as of May 20, 1977, which said agreement governs the operation and maintenance of the Trans Alaska Pipeline System and the employment of an operator to perform on behalf of Owners certain services related to operating and maintaining the said System, and

WHEREAS Owners now desire to amend the said Agreement as provided hereinbelow:

NOW THEREFORE, in consideration of the mutual covenants herein contained and other good and valuable consideration, Owners hereby agree and covenant as follows:

1. Subparagraph (ii) of Paragraph (b) of Section 7.1 of the said Agreement for Operation and Maintenance of the Trans Alaska Pipeline System be and is hereby amended to read "(ii) its temperature does not exceed 142° F,".
2. In all other respects, the said Agreement for Operation and Maintenance of the Trans Alaska Pipeline System shall remain in full force and effect.
3. This First Amendment to the Agreement for Operation and Maintenance of the Trans Alaska Pipeline System may be executed in counterparts, each of which shall

SECOND AMENDMENT  
TO  
AGREEMENT FOR THE  
OPERATION AND MAINTENANCE OF  
THE TRANS ALASKA PIPELINE SYSTEM

THIS SECOND AMENDMENT to the Agreement for the Operation and Maintenance of the Trans Alaska Pipeline System, entered into as of January 2, 1979 by and among Amerada Hess Pipeline Corporation, a Delaware corporation, ARCO Pipe-Line Company, a Delaware corporation, BP Pipelines Inc., a Delaware corporation, Exxon Pipeline Company, a Delaware corporation, Mobil Alaska Pipeline Company, a Delaware corporation, Phillips Alaska Pipeline Corporation, a Delaware corporation, Sohio Pipe Line Company, a Delaware corporation, and Union Alaska Pipeline Company, a California corporation, herein called "Owners":

W I T N E S S E T H :

WHEREAS Owners or their predecessors in interest in the Trans Alaska Pipeline System entered into that certain agreement entitled "Agreement for the Operation and Maintenance of the Trans Alaska Pipeline System" as of May 20, 1977, which said agreement governs the operation and maintenance of the Trans Alaska Pipeline System and the employment of an operator to perform on behalf of Owners certain services related to operating and maintaining the said System, and

WHEREAS said Agreement was heretofore amended by the provisions of the First Amendment thereto entered into by Owners as of August 1, 1978, and

WHEREAS Owners now desire to amend further the said Agreement as provided hereinbelow;

NOW THEREFORE, in consideration of the mutual covenants herein contained and other good and valuable consideration, Owners hereby agree and covenant as follows:

1. Subparagraph (ii) of Paragraph (b) of Section 7.1 of the said Agreement for Operation and Maintenance of the Trans Alaska Pipeline System be and is hereby amended to read:

(ii) its temperature does not exceed 142° F, provided that petroleum may be accepted for transportation at any point in the System at a temperature in excess of 142° F but only under such circumstances and during such times as Operator hereunder determines, with approval of the Owners acting through the Owners Committee under Section 4.2 hereof, will not result in violation of any design or operating requirement for the System at any point in the System or result in inequities or discrimination as between Owners or shippers,

FIFTH AMENDMENT  
TO  
AGREEMENT FOR THE  
OPERATION AND MAINTENANCE OF  
THE TRANS ALASKA PIPELINE SYSTEM

THIS FIFTH AMENDMENT to the Agreement for the Operation and Maintenance of the Trans Alaska Pipeline System, entered into as of the 15th day of April, 1982, by and among Amerada Hess Pipeline Corporation, a Delaware corporation, ARCO Pipe Line Company, a Delaware corporation, BP Pipelines Inc., a Delaware corporation, Exxon Pipeline Company, a Delaware corporation, Mobil Alaska Pipeline Company, a Delaware corporation, Phillips Alaska Pipeline Corporation, a Delaware corporation, Sohio Pipe Line Company, a Delaware corporation, and Union Alaska Pipeline Company, a California corporation, herein called "Owners";

WITNESSETH:

WHEREAS Owners or their predecessors in interest in the Trans Alaska Pipeline System entered into that certain agreement entitled "Agreement for the Operation and Maintenance of the Trans Alaska Pipeline System" as of May 20, 1977, (which said agreement, as amended, is herein called "Agreement") which governs the operation and maintenance of the Trans Alaska Pipeline System and the employment of an operator to perform on behalf of Owners certain services related to operating and maintaining the said System, and

---

~~WHEREAS said Agreement was heretofore amended by the provisions of the First, Second, Third and Fourth Amendments thereto entered into among the Owners as of September 1, 1978, January 2, 1979, July 1, 1980 and September 1, 1980, respectively, and~~

WHEREAS Owners now desire to amend further the said Agreement as provided herein below;

NOW, THEREFORE, in consideration of the mutual covenants herein contained and other good and valuable consideration, Owners hereby agree and covenant that the Agreement shall be and hereby is amended as follows:

A new Subsection 7.9 shall be added to Section 7 to read:

7.9 Operation of Standby Pumping Units. Standby pumping units may be operated from time to time in the discretion of the Operator. In the event Owners, or any of them, construct facilities qualifying as an Expansion or Substage, as those

Fifth Amendment to  
Agreement for the Operation  
and Maintenance of the  
Trans Alaska Pipeline System  
Page Two

terms are used in the TAPS Agreement, and if the use of standby pumps as hereinabove authorized without the use of a drag reducing agent adds an increment of Design Capacity to that achieved by the defined Expansion facilities, the Design Capacity of the System shall include such increment attained by operating standby pumps.

IN TESTIMONY WHEREOF, this Fifth Amendment to the Agreement for the Operation and Maintenance of the Trans Alaska Pipeline System is executed by Owners in counterparts, each of which shall be considered an original, effective as of the day and date first appearing above.

AMERADA HESS PIPELINE  
CORPORATION

MOBIL ALASKA PIPELINE COMPANY

By \_\_\_\_\_

By \_\_\_\_\_

ARCO PIPE LINE COMPANY

PHILLIPS ALASKA PIPELINE  
CORPORATION

By \_\_\_\_\_

By \_\_\_\_\_

BP PIPELINES INC.

SOHIO PIPE LINE COMPANY

By \_\_\_\_\_

By L.C. Thomas

EXXON PIPELINE COMPANY

UNION ALASKA PIPELINE COMPANY

Storm  
AP. KPS

By [Signature]

By \_\_\_\_\_

WHEREAS said Agreement was heretofore amended by the provisions of the First, Second, Third, Fourth, Fifth, Sixth and Seventh Amendments thereto entered into among the Owners as of September 1, 1978, January 2, 1979, July 1, 1980, September 1, 1980, April 15, 1982, September 18, 1982 and August 1, 1983, respectively, and

WHEREAS Owners now desire to amend further the said Agreement as provided herein below;

NOW, THEREFORE, in consideration of the mutual covenants herein contained and other good and valuable consideration, Owners hereby agree and covenant that the Agreement shall be and hereby is amended as follows:

1. The first sentence of Paragraph (b) of Subsection 7.1 is hereby amended to read:

(b) Petroleum will not be accepted for transportation in the System unless (i) it is suitable for refining or use as a fuel and contains no more than thirty-five one hundredths of 1% (0.35%) by volume of basic sediment and water, (ii) its temperature does not exceed 142° F, provided that petroleum may be accepted for transportation at any point in the System at a temperature in excess of 142° F but only under such circumstances and during such times as Operator hereunder determines, with approval of the

Owners acting through the Owners Committee under Section 4.2 hereof, will not result in violation of any design or operating requirement for the System at any point in the System or result in inequities or discrimination as between Owners or shippers, (iii) its hydrogen sulfide ( $H_2S$ ) content in solution does not exceed 50 parts per million by weight, and (iv) it will not result in the calculated combined stream of Petroleum in the System under the custody of each Owner at any given entry point in the System at any given time exceeding ten (10) parts per million hydrogen sulfide ( $H_2S$ ) content in solution by weight or the vapor pressure of such combined stream exceeding the greater of atmospheric pressure or 14.7 psia at receipt temperature.

IN TESTIMONY WHEREOF, this Eighth Amendment to the Agreement for the Operation and Maintenance of the Trans Alaska Pipeline System is executed by Owners in counterparts, each of which shall be considered an original, effective as of the day and date first appearing above.

AMERADA HESS PIPELINE  
CORPORATION

By *Michael M. Steiner*

MOBIL ALASKA PIPELINE COMPANY *A*

By *Robert J. ...*

1  
2  
3  
4  
5  
6  
7  
8

BEFORE THE STATE OF ALASKA  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

STATE OF ALASKA, DEPARTMENT OF )  
ENVIRONMENTAL CONSERVATION, )

Complainant, )

vs. )

ALYESKA PIPELINE SERVICE COMPANY, )

Respondent. )

---

COMPLIANCE ORDER BY  
CONSENT AND AGREEMENT  
SETTLING LIABILITY

9  
10  
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12  
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16  
17

This Compliance Order By Consent and Agreement  
Settling Liability is entered into by and between the Alaska  
Department of Environmental Conservation ("ADEC") and Alyeska  
Pipeline Service Company ("Alyeska") to settle all currently  
pending air quality disputes relating to permits for the  
construction, modification, operations, or any physical or  
operational changes to the trans-Alaska pipeline system ("TAPS"),  
including its pump stations and the Valdez Marine Terminal.

18  
19

Allegations.

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23  
24  
25  
26

1. By letter to Alyeska's President James B. Hermiller dated June 18, 1990 (copy attached hereto as Exhibit A) ADEC has alleged that Alyeska has illegally failed to obtain prevention of significant deterioration ("PSD") and state emission permits pursuant to 18 Alaska Administrative Code ("AAC") 50.300 - .400 for changes made to TAPS since the time of its original construction. The United States Environmental Protection Agency ("EPA") in a Notice of Violation issued June 19, 1990 has made similar allegations under the federal Clean Air

DEPARTMENT OF LAW  
OFFICE OF THE ATTORNEY GENERAL  
ANCHORAGE BRANCH  
1031 W. FOURTH AVENUE, SUITE 200  
ANCHORAGE, ALASKA 99501  
PHONE: (907) 276-3550

1 Act. ADEC's allegations, if true, may subject Alyeska to civil  
2 and criminal liability under, inter alia, AS 46.03.760 and  
3 46.03.790. ADEC therefore alleges that the initiation of  
4 compliance order proceedings under AS 46.03.850 is justified.

5 2. Alyeska denies ADEC's allegations, and contends  
6 that it has obtained all required permits for its operations, has  
7 constructed and operated TAPS as originally permitted, and has  
8 not made any changes requiring PSD or state emission permits  
9 without obtaining such permits. Alyeska denies that compliance  
10 order proceedings are justified. However, Alyeska wishes to  
11 avoid the expense and uncertainty of litigation and further  
12 compliance order proceedings. Therefore, Alyeska voluntarily  
13 enters into this Compliance Order By Consent and Agreement  
14 Settling Liability ("Agreement") with ADEC.

15  
16 Purpose.

17 3. The purpose of this Compliance Order by Consent  
18 and Agreement Settling Liability is to resolve all pending claims  
19 of ADEC with respect to the need for PSD or state permits for  
20 construction, modification, operation, or any physical or  
21 operational changes to TAPS from the time of its original  
22 permitting and construction through current operations, and to  
23 assure full compliance with all existing air quality permitting  
24 requirements.

25  
26 Covenant Not To Sue.

1                   4. ADEC agrees not to bring any action, civil or  
2 criminal, against Alyeska, its officers and directors, the TAPS  
3 owner companies, or their officers and directors, for any  
4 penalties or sanctions for failure to obtain PSD or state  
5 emission permits for any action or event from the construction of  
6 TAPS through the date of this Agreement. ADEC will not  
7 encourage, directly or indirectly, any such action by EPA or  
8 others, but may take such action as is needed to fulfill its  
9 statutory responsibilities, such as by responding to public  
10 information inquiries or records requests under state law.  
11

12 PSD Permit Application(s).

13                   5. Not later than December 1, 1990 Alyeska will file  
14 pursuant to 18 AAC 50.300(c) (3) a best available control  
15 technology analysis ("BACT") of tank venting, as BACT is defined  
16 in 18 AAC 50.900(9), for the volatile organic compound ("VOC")  
17 emissions vented from the 18 crude oil storage tanks located at  
18 the Valdez Marine Terminal. The analysis will include a proposed  
19 schedule for application of each proposal for BACT Alyeska makes.  
20 Thereafter,

21                   (a.) in the event that ADEC agrees with Alyeska's  
22 BACT analysis, then Alyeska shall take such installation or other  
23 action as might be required to apply the proposed BACT to tank  
24 venting in accordance with a schedule approved by ADEC; or

25                   (b.) in the event ADEC disagrees with Alyeska's  
26 BACT analysis, it shall so notify Alyeska. If thereafter ADEC

1 and Alyeska cannot come to an agreement with respect to the  
2 appropriate BACT, ADEC will make its selection of BACT for tank  
3 venting provided that in no event will Alyeska be required to  
4 spend more in costs of control than \$3,000.00 per ton of VOCs.  
5 Alyeska may appeal pursuant to 18 AAC 15.200 - .310 ADEC's  
6 selection of BACT only on the grounds the BACT chosen by ADEC is  
7 unsafe, mechanically impossible to apply, or exceeds costs of  
8 control of \$3,000.00 per ton of VOCs. If Alyeska does not appeal  
9 it will take such installation or other action as might be  
10 required to apply ADEC's choice of BACT. If Alyeska does appeal,  
11 absent a stay granted pursuant to 18 AAC 15.210 or an injunction  
12 granted by the Superior Court, it shall abide by ADEC's decision  
13 selecting BACT and install or take such other action according to  
14 the timetable set out in the decision pending completion of the  
15 appeal.

16 6. With respect to the three subjects enumerated in  
17 ADEC's letter of June 18, 1990, other than tank venting which is  
18 covered by paragraph 5 above, Alyeska may:

19 (a.) file PSD permit applications for any one or  
20 a combination of the three subjects, or

21 (b.) continue to operate in accordance with the  
22 applicable "allowable emissions" limitations set out in paragraph  
23 7 below.

24 If Alyeska files a PSD permit application or  
25 applications under subparagraph (a) above but thereafter elects  
26 not to construct or to operate under the terms and conditions of

1 any final PSD permit issued [after any appeals that may be taken  
2 of ADEC's best available control technology ("BACT")  
3 determination under 18 AAC 50.400(c) are finally resolved], it  
4 may instead continue to operate in accordance with the applicable  
5 allowable emissions limitations set out in paragraph 7 below with  
6 respect to the subject matter of the application or applications.  
7 If a final PSD permit is issued and Alyeska elects under the  
8 preceding sentence not to operate under it, it shall so notify  
9 ADEC and ask that the PSD permit be rescinded.

10  
11 Allowable Emissions.

12 7. The allowable emissions for the three subjects,  
13 other than tank venting covered by paragraph 5 above, enumerated  
14 in ADEC's June 18, 1990 letter are as follows:

15 (a.) The sulfur content of the liquid fuel used  
16 to power the Avon gas generators at pump stations #6 - 10, and  
17 12, may be no higher than .17 percent.

18 (b.) The Avon gas generators at the pump stations  
19 may be operated under the maximum fuel consumption rates and  
20 subject to the limitations in the attached Exhibit B for liquid  
21 fuel-fired generators and the attached Exhibit C for gas fired  
22 generators.

23 (c.) Each of the waste gas incinerators at the  
24 Valdez Marine Terminal may be operated at a maximum incineration  
25 rate of 184 million british thermal units ("MMBTU") per hour, or  
26 a maximum monthly average of 522 MMBTU per hour total for all

1 three waste gas incinerators, and within design limits for  
2 minimum and maximum operation of any individual incinerator.

3  
4 Emission Limitations Pending New PSD Permits.

5 8. For any source subject to a PSD application or  
6 applications filed under paragraph 6 above, Alyeska will comply  
7 with the allowable emissions limitations set out in paragraph 7  
8 while such PSD application or applications are pending ADEC's  
9 review and at all times in the future unless and until such  
10 limitations are altered by a PSD permit issued by ADEC pursuant  
11 to 18 AAC 50.300 - .400 or otherwise altered under the provisions  
12 of this paragraph 8. Alyeska may petition the ADEC's Director of  
13 the Division of Environmental Quality for permission to burn fuel  
14 in the Avon gas generators with a higher sulfur content than  
15 specified in subparagraph 7(a) above, or to operate such  
16 generators at greater fuel consumption rates than those specified  
17 in subparagraph 7(b) above for such periods of time as may be  
18 determined by ADEC during PSD permit processing. If Alyeska  
19 files such a petition with the Director, it shall include an  
20 adequate description explaining why the allowable emission  
21 limitation(s) impose unreasonable economic burdens or limits  
22 pipeline throughput without significant environmental benefit.  
23 The Director's decision to allow or not allow any such periods of  
24 operation will be at his or her sole discretion and subject to  
25 conditions imposed by the Director, and will not be subject to  
26 appeal to the ADEC Commissioner or to any court.

1 9. Pending completion of BACT review for the VOC  
2 emissions from the crude oil storage tanks at the Valdez Marine  
3 Terminal, and any additional time required for appeals or  
4 construction and installation of equipment necessary to bring  
5 Alyeska into compliance with the requirements of any permit,  
6 Alyeska shall limit venting time from the 18 crude oil storage  
7 tanks at the Valdez Marine Terminal to .5% of the time based on a  
8 monthly average. For the purposes of determining compliance with  
9 this .5% limitation, venting time will not include:

10 (a.) downtime due to scheduled maintenance  
11 ("scheduled maintenance" as defined in paragraph 15 below) or  
12 emergency repair of the vapor recovery system. ADEC will be  
13 notified in advance of any of these activities;

14 (b.) venting due to unavoidable operational  
15 upsets and/or equipment malfunctions ("malfunctions" as defined  
16 in paragraph 15 below).

17 Alyeska will submit to ADEC a best operations  
18 management plan for the 18 crude oil storage tanks and the vapor  
19 recovery system not later than October 1, 1990. The plan will  
20 include a proposed definition of "operational upsets" and a  
21 justification for the definition, detailing the likely  
22 operational upsets that would produce tank venting. To the  
23 extent the provisions of this paragraph are inconsistent with the  
24 provisions of paragraph 15 below, pending implementation of BACT  
25 under paragraph 5 above the provisions of this paragraph shall  
26 govern.

1  
2 Waiver of Judicial Review Rights.

3           10. As between it and ADEC, Alyeska will not  
4 contest PSD applicability for the four subjects enumerated in  
5 ADEC's June 18, 1990 letter, or challenge the allowable emissions  
6 limitations set out in paragraph 7 above. However, nothing  
7 herein shall bar Alyeska from contesting PSD applicability as  
8 between it and EPA or other third parties should they seek  
9 penalties or sanctions based upon such PSD applicability under  
10 the federal Clean Air Act or any approved section(s) of the State  
11 of Alaska Air Quality Control Plan.

12  
13 Permit Renewal Applications.

14           11. Ordinarily an ADEC air quality control permit  
15 applicant must file the application 30 days before the proposed  
16 effective date of the permit or permit renewal. ADEC and Alyeska  
17 agree that this 30 day period is often too short a time for  
18 careful consideration of a requested permit, particularly when  
19 the permit renewal involves revisions to the expiring permit or  
20 involves consideration of physical or operational changes at a  
21 facility. Accordingly, Alyeska agrees that henceforth it will  
22 file applications for air quality control permit renewals for the  
23 pump stations and Valdez Marine Terminal at least 90 calendar  
24 days before the expiration date on the then existing permit.  
25 ADEC agrees that it will release to Alyeska a draft permit  
26 renewal or permit denial, for review, at least 30 calendar days

1 prior to the expiration date of the existing permit, or at the  
2 time any notice is published under 18 AAC 50.400(a)(1), which  
3 ever event occurs first. Within 15 days of receiving the draft,  
4 Alyeska may request that ADEC meet with its representatives to  
5 discuss the draft permit or denial. Should Alyeska not file a  
6 permit renewal application at least 90 days before the expiration  
7 date of an existing permit, ADEC will be relieved of any  
8 obligation under this paragraph. Accordingly, a breach of this  
9 paragraph by either Alyeska or ADEC will not be considered a  
10 material breach of this Agreement, nor subject Alyeska to any  
11 penalty, and this paragraph will not otherwise be enforceable  
12 under AS 46.03.760 or 46.03.790 or other applicable law against  
13 either party.

14  
15 Advisory Working Group.

16 12. ADEC, in consultation and cooperation with  
17 Alyeska, will create an advisory working group of technically  
18 qualified and competent individuals for the purposes set out  
19 below. The group shall consist of 3 representatives each from  
20 Alyeska and ADEC, which representatives may not be attorneys and  
21 need not be employees of either party, and may be replaced from  
22 time to time as the need arises. Alyeska will provide  
23 consultants and other support as necessary, and will provide the  
24 group with such information as the group may require. Alyeska  
25 and ADEC will designate their respective 3 representatives in  
26 writing to the other within 10 working days of the effective date

1 of this Agreement, which representatives may be replaced by other  
2 qualified individuals as the need arises. The group will conduct  
3 its work and any studies in a cost-efficient and objective  
4 manner. The group will be co-chaired by an ADEC and Alyeska  
5 representative. The group will advise and make written  
6 recommendations, including majority and minority reports, to ADEC  
7 not later than March 1, 1991 (except as an earlier date is  
8 otherwise noted below) on:

9 (a.) proposed BACT selections for venting from  
10 the 18 crude oil storage tanks at the Valdez Marine Terminal and  
11 for any PSD permit application filed under paragraph 6 above.  
12 The group's written recommendations for BACT selection(s) for  
13 venting from the 18 crude oil storage tanks shall be delivered to  
14 ADEC not later than January 15, 1991;

15 (b.) any additional emissions data that the group  
16 determines to be necessary to evaluate any significant emission  
17 sources operated by Alyeska at the pumps stations or Valdez  
18 Marine Terminal for compliance with applicable emission  
19 limitations;

20 (c.) best management practices for inclusion in  
21 future Valdez Marine Terminal permits governing the operation and  
22 routine maintenance of the Valdez Marine Terminal vapor recovery  
23 system, including waste gas incinerators and crude oil storage  
24 tanks, so as to reduce venting of VOCs from the crude oil storage  
25 tanks to the maximum extent possible and to maintain the maximum  
26 combustion efficiency of the waste gas incinerators;



1 above and in processing the PSD permit applications and BACT  
2 analyses submitted pursuant to paragraphs 5 and 6 above.  
3 Reasonable costs will include costs such as any ADEC consultant  
4 fees, ADEC staff time at \$35.00 per hour, and incidental  
5 administrative costs and expenses, such as for travel and  
6 photocopying. Such costs will be billed to Alyeska on a monthly  
7 basis; total costs which ADEC may bill Alyeska for ADEC's  
8 participation in the working group after the date of this  
9 Agreement shall not exceed \$100,000.00. ADEC will provide  
10 adequate documentation to Alyeska of all costs claimed as  
11 reimbursable under this paragraph to Alyeska.

12  
13 Reimbursement of Past Costs.

14 14. Alyeska will pay to the State of Alaska not later  
15 than 10 working days from the effective date of this Agreement  
16 the sum of \$250,000.00. This sum shall reimburse ADEC for its  
17 costs of investigating PSD and permit matters and issuing interim  
18 permits to Alyeska for the period from December 1987 to the date  
19 of this Agreement.

20  
21 Upset, Malfunction and Scheduled Maintenance.

22 15. The pump station and Valdez Marine Terminal air  
23 quality control permits are hereby amended to include the  
24 following condition governing upsets, malfunctions and scheduled  
25 maintenance:

26 "DEFINITIONS

1 — 'Excess emissions' means the emission of air  
2 contaminants in excess of applicable emission limitations or  
3 requirements in this permit or in any applicable regulation in 18  
4 AAC 50.

5 'Malfunction' means any sudden and unavoidable failure  
6 of a source, including air pollution control equipment, process  
7 equipment or process to operate in an expected manner; failures  
8 caused entirely or in part by poor maintenance, careless  
9 operation or any other preventable equipment breakdown shall not  
10 be considered a 'malfunction'.

11 'Scheduled maintenance' means maintenance of a source  
12 which occurs during a period established by a term of this  
13 permit, or which begins 7 working days after the permittee  
14 provides written notice to the Department, or for which the  
15 Department has otherwise provided written permission.

16 'Shutdown' means the cessation of operation of any  
17 source, including pollution control equipment, process equipment  
18 or process for any purpose.

19 'Startup' means the setting into operation of any  
20 source, including pollution control equipment, process equipment  
21 or process.

22  
23 TREATMENT OF EXCESS EMISSION INCIDENTS.

24 Excess emissions caused because of a startup,  
25 shutdown, malfunction or period of scheduled maintenance of a  
26 source (including pollution control equipment, process equipment

1 or process) shall not be considered a violation of this permit or  
2 the emission limitations of 18 AAC 50, or counted as an increase  
3 in emissions for purposes of 18 AAC 50.300(6)(B) and (C) provided  
4 that:

5 1. the excess emissions do not occur with such  
6 frequency that careless, marginal or unsafe operation is  
7 indicated, or are not part of a recurring pattern indicative of  
8 inadequate design, operation or maintenance;

9 2. the emission of air contaminants is reduced as  
10 much as practicable during the period of excess emissions;

11 3. during scheduled maintenance, repairs to the  
12 equipment causing the excess emissions are made with maximum  
13 reasonable effort, including the use of off-shift and overtime  
14 labor as needed and as available;

15 4. when startup or shutdowns are a frequent part of  
16 routine operations, the permittee takes maximum effort to reduce  
17 excess emissions during such startup or shutdown;

18 5. to the maximum extent practicable, permittee  
19 maintained and operated the source of the excess emissions in a  
20 manner consistent with good practice for minimizing emissions and  
21 otherwise consistent with the manufacturer's suggested operation  
22 and maintenance practices; and

23 6. permittee notified the Department of the excess  
24 emissions incident by telephone not later than 24 hours after the  
25 permittee knows or reasonably should have known of the event, and  
26 included in the notification a description of the nature of the

1 occurrence, of its duration, of the steps taken consistent with  
2 1) through 5) immediately above, as applicable, and permittee  
3 timely provided a written report of the excess emissions incident  
4 consistent with the reporting requirements of the permit."

5 The foregoing condition replaces paragraphs 22 and 23  
6 of the existing Valdez Marine Terminal permit, paragraphs 13 and  
7 14 of the existing pump station 1 through 4 permits, and  
8 paragraphs 14 and 15 of the existing pump station 12 permit, and  
9 will be deemed to be included as a condition in the upcoming  
10 permits for pump stations 6 through 10. For each permitted  
11 facility, Alyeska will notify ADEC of any excess emissions  
12 incident in compliance with paragraph 6 of the above quoted  
13 condition governing upsets, malfunctions and scheduled  
14 maintenance.

15  
16 Withdrawal of Appeals and Motions for Stay.

17 16. Alyeska hereby withdraws its requests for  
18 adjudicatory hearings and motions for stay filed with ADEC for  
19 pump stations #1 through 4 and 12, and for the Valdez Marine  
20 Terminal, without prejudice to its right to file such requests or  
21 motions for future permits. Alyeska agrees that it will not file  
22 such requests or motions for the pump station #6 through 10  
23 permits when issued on or before October 1, 1990, provided that  
24 such permits are no more stringent than the draft permits  
25 received by letter dated September 7, 1990, without prejudice to  
26 its right to file such requests or motions for future permits.

1 The purpose of this provision is to give the advisory working  
2 group time to perform the analyses and make the recommendations  
3 required by paragraph 12 above for the purpose of longer term  
4 pump station and Valdez Marine Terminal permits.  
5

6 Valdez Marine Terminal Vapor Recovery System.

7 17. For the purposes of this Agreement and future  
8 permits Alyeska agrees that ADEC currently has statutory and  
9 regulatory authority to require as a permit condition that  
10 Alyeska operate and maintain in good working order the existing  
11 vapor recovery system, including the waste gas incinerators and  
12 associated piping and equipment, at the Valdez Marine Terminal.  
13

14 Delays.

15 18. If any event occurs which Alyeska believes will  
16 or may cause delay in or prevent the achievement of any provision  
17 of this Agreement, Alyeska shall notify ADEC in writing within 7  
18 calendar days of becoming aware of the anticipated delay or  
19 inability to comply and describe the expected length of the  
20 delay, the precise cause or causes of the delay or the reasons  
21 for its inability to comply, and any measures it intends to take  
22 to minimize the delay or attempt to avoid noncompliance. Alyeska  
23 may request within the 7 day period a meeting with ADEC to  
24 explain the anticipated delay or inability to comply. For events  
25 causing delay or inability to comply that could not have  
26 reasonably been foreseen or anticipated, such as an earthquake,

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OFFICE OF THE ATTORNEY GENERAL  
ANCHORAGE BRANCH  
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1 Alyeska shall notify ADEC in writing within 7 days of the  
2 occurrence of the event.

3 If ADEC finds that (a) Alyeska has complied with the  
4 notice requirements of the preceding paragraph, and (b) that any  
5 delay or inability to comply has or will be caused by  
6 engineering, design or installation problems which could not  
7 reasonably have been foreseen and prevented, or by labor strife,  
8 a natural disaster (such as an earthquake) or by other  
9 circumstances beyond the reasonable control of Alyeska, ADEC  
10 shall extend the time for performance for a period no longer than  
11 the delay resulting from those circumstances.

12 If the ADEC determines that Alyeska has not complied  
13 with the notice requirements of the preceding paragraph, or that  
14 the event causing the delay or inability to comply is not beyond  
15 the reasonable control of Alyeska, failure to comply with the  
16 provisions of this Agreement shall constitute a breach of its  
17 requirements. ADEC shall notify Alyeska in writing of its  
18 reasons or findings in the event ADEC denies Alyeska's request  
19 for an extension of time or denies waiver of the performance  
20 required hereunder. The burden of proving the delay or inability  
21 to comply is caused by circumstances beyond the control of  
22 Alyeska, and, if applicable, the length of any such delay  
23 attributable to those circumstances, shall rest with Alyeska.  
24 Increases in cost or expenses incurred by Alyeska in fulfilling  
25 the requirements of this Agreement shall not be a basis for any  
26 extension of time or excuse for inability to comply. Any

1 approved delay in or waiver of interim requirements shall not  
2 automatically justify or excuse delay in the attainment of  
3 subsequent requirements. Alyeska's submission of a request for  
4 an extension of time does not toll any time specified in this  
5 paragraph unless ADEC provides a written extension.

6 ADEC's decision under this paragraph shall constitute  
7 final agency action for purposes of judicial review under Alaska  
8 Rule of Appellate Procedure 602(a)(2). However, ADEC's decision  
9 shall remain in effect pending resolution of the appeal unless a  
10 stay is granted by the court. Unless stayed by the court, any  
11 stipulated penalties imposed under paragraph 19 of this Agreement  
12 shall continue to accrue during any appeal unless a final  
13 decision on appeal is rendered in Alyeska's favor, in which case  
14 Alyeska shall not be liable to pay the stipulated penalties.

15  
16 Stipulated Penalties.

17 19. Should Alyeska fail to meet the BACT analysis  
18 deadline set out in paragraph 5 above, it shall pay to the State  
19 of Alaska \$100,000.00 for the first day the deadline is missed,  
20 and an additional \$5,000.00 penalty for each day thereafter that  
21 the deadline is missed, subject to the provisions of paragraph 18  
22 above governing excused delays.

23  
24 Reservation Of Rights.

25 20. Except as otherwise expressly provided in this  
26 Agreement, the State of Alaska reserves the right, and this

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1 Agreement does not waive any such right, to investigate, pursue  
2 or bring any claim, civil or criminal, legal or equitable,  
3 including but not limited to claims under AS 46 of any kind, or  
4 issue any order against Alyeska for any future violation of any  
5 statute, regulation, permit, approval, order (including but not  
6 limited to this Agreement) or acceptance, including but not  
7 limited to any violation of any permit, order, statute or  
8 regulation governing the emission of air contaminants, and  
9 Alyeska reserves all rights and defenses against all such claims  
10 that may be asserted by the State of Alaska.

11 Nothing in this Agreement is a waiver by ADEC of its  
12 rights under AS 46.03.820 (governing emergencies).

13  
14 Enforceability Under AS 46.03.760, 46.03.765 and 46.03.790

15 21. Except for paragraph 11 above, the provisions of  
16 this Agreement shall be considered an enforceable order against  
17 Alyeska for the purposes of AS 46.03.760, 46.03.765 and  
18 46.03.790.

19  
20 18 AAC 95 Waiver.

21 22. In partial consideration for this Agreement,  
22 Alyeska knowingly and voluntarily waives all its rights and the  
23 procedures which would otherwise attach to the issuance of a  
24 compliance order under 18 AAC 95.

25  
26 Amendment.

1                    23. No amendment to this Agreement is valid unless  
2 approved in writing by the undersigned representative of ADEC (or  
3 a duly authorized designee) and by a duly authorized  
4 representative of Alyeska.

5  
6 Effective Date.

7                    24. The effective date of this Agreement is the date  
8 it is signed by the authorized ADEC official below.

9 Dated: September 15, 1990.

10  
11 ALYESKA PIPELINE SERVICE COMPANY

12  
13 James Hermiller *ATS*  
14 By: James Hermiller  
15 Title: President

16 Dated: September 19, 1990

17 ALASKA DEPARTMENT OF  
18 ENVIRONMENTAL CONSERVATION

19 Michele Brown  
20 By: Michele Brown  
21 Title: Regional Administrator

22  
23  
24  
25  
26  
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# STATE OF ALASKA

DEPT. OF ENVIRONMENTAL CONSERVATION

DIVISION OF ENVIRONMENTAL QUALITY  
P.O. BOX 9, JUNEAU, ALASKA 99811-1800

June 18, 1990

Mr. James B. Hermiller, President  
Alyeska Pipeline Service Company  
1835 South Bragaw Street  
Anchorage, AK 99512

Dear Mr. Hermiller:

As you know, the Alaska Department of Environmental Conservation (the Department, ADEC) has been concerned for several years that Alyeska Pipeline Service Co. (Alyeska, APLS Co.) made modifications to trans-Alaska pipeline facilities without the review and approval of the Department as required by Title 18 of the Alaska Administrative Code (AAC) Section 50.300(s). The Department's concern arose initially because the visible air quality at Valdez appeared to be deteriorating, and because of concerns about the impact of the transportation and storage of natural gas liquids. Since 1988 ADEC has conducted an extensive investigation of these and other issues, based in part on information submitted to ADEC and the Environmental Protection Agency (EPA) over the last two years.

Based on this review, ADEC believes that Alyeska Pipeline Service Co. has made the following modifications of facilities as described in 18 AAC 50.300(a)(5)(C) and 50.300(s)(6)(C) and as defined in 18 AAC 50.900(28):

1. An increase in maximum fuel consumption at each main gas turbine located at Pump Stations 1-4, 6-10, and 12, associated with the addition of rim cooling to these sources. This modification has resulted in an increase in oxides of nitrogen (NOx) emissions at Pump Stations 1-4, 6-10, and 12 greater than the 40 tons/yr quantity set out in 18 AAC 50.300(s)(6)(C)(ii).
2. An increase in the maximum fuel sulfur content from 0.17 percent to 0.4 percent in the fuel oil used for the main gas turbines located at Pump Stations 6-10 and 12. This modification has resulted in an increase in sulfur dioxide (SO<sub>2</sub>) emissions at Pump Stations 6-10 and 12 greater than the 40 tons/yr quantity set out in 18 AAC 50.300(s)(6)(C)(iii).

Hand Delivered

CERTIFIED MAIL  
RETURN RECEIPT  
REQUESTED

DATE	TIME	BY	FOR	NO.	DATE	BY	NO.
RECEIVED							
JUN 18 1990							
J. B. HIGGINS							
FILE							

cc: L.E. Valdez  
J.L. Kelly

STEVE COWPER, COVER

Telephone  
(907) 465-2640

Exhibit A

S

00431

Mr. James B. Hermiller

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June 18, 1990

3. The release of volatile organic compounds (VOC) on an intermittent basis from crude oil storage tank vents without collection by a vapor recovery system at the Valdez Marine Terminal. These intermittent releases have resulted in an increase in VOC emissions at the Valdez Marine Terminal greater than the 40 tons/yr quantity set out in 18 AAC 50.300(a)(6)(C)(v).
4. An increase in the maximum rated capacity of the waste gas incinerators located at the Valdez Marine Terminal. This modification has resulted in an increase in NOx and SO<sub>2</sub> emissions at the Valdez Marine Terminal greater than the 40 tons/yr quantities set out in 18 AAC 50.300(a)(6)(C)(ii) and (iii).

These and other changes at the Alyeska Pipeline Service Co. facilities fall within the purview of 18 AAC 15.100(e), which forbids the owner of an existing facility from expanding, modifying, or making any other change in a facility process or operation which might result in an increase in emissions of any size without first securing a new permit. The Department has not aggregated the smaller increases in emissions from each of the other sources modified or added to a particular facility for the purposes of determining the applicability of 18 AAC 50.300(a)(6)(C). Review of the accumulation of increases in emissions from a series of modifications at the same facility is required under the regulations. The Department reserves the right to pursue the other modification and accumulation issues; however, in order to address the most serious of the outstanding issues, ADEC has elected for now to discuss in detail only the four items identified above.

#### Increase in Maximum Fuel Usage at Pump Stations

In the 1974 air quality control permit applications for the main gas turbines at Pump Stations 1-4, 6-10, and 12 (December 15, 1988, Sec. 114 response, Vol. I, tab. 1), Alyeska listed the maximum fuel usage for each main gas turbine as 167 thousand standard cubic feet per hour (MSCF/hr) for natural gas firing, and 6,000 pounds per hour (lbs/hr) for turbine fuel oil firing.

In the December 15, 1988, Sec. 114 response to the EPA (page 35, Table 3), Alyeska quantified the maximum fuel usage for each main gas turbine as 168 MSCF/hr for natural gas firing and 1,116 gals/hr for liquid fuel firing before the addition of rim cooling, and 207 MSCF/hr for natural gas and 1,373 gals/hr for liquid fuel after the addition of rim cooling.

When the NOx emissions from the gas turbines at the 1974 fuel rate are compared with the NOx emissions at the 1988 fuel rate, the increase in NOx emissions due to the increase in fuel usage resulting from the addition of rim cooling is approximately 48 tons/yr per turbine for Pump Stations 1-4, and approximately 174 tons/yr per turbine for Pump Stations 6-10, and 12 (see Attachment A for calculations).

Mr. James B. Hermiller

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June 18, 1990

The increase in emissions of NO<sub>x</sub> at each pump station is greater than the 40 tons/yr quantity listed in 18 AAC 50.300(a)(6)(C)(iii). Therefore, the addition of rim cooling to each main gas turbine represents a modification, as defined by 18 AAC 50.900(28) of a "major" facility described in 18 AAC 50.300(a)(6)(C), and a permit application and review is required in accordance with 18 AAC 50.300(b) and (c) and 50.400(c)(3), as well as by the federal prevention of significant deterioration (PSD) regulations at 40 CFR 52.21(b)(2).

#### Increase in Maximum Sulfur Content of Fuel

In the 1974 air quality control permit applications for the main gas turbines at Pump Stations 10 and 12 (December 15, 1988, Sec. 114 response, Vol. I exh. 1), Alyeska listed the maximum sulfur content of the fuel burned in the main gas turbines as 0.17 percent and identified the grade of fuel as "ASTM No.1 - GT fuel." Furthermore, in an October 19, 1974, letter from Mr. Frank Therrell of Alyeska to Dr. Max Brewer of ADEC, Alyeska amended the 1974 permit applications for the main gas turbines at Pump Stations 6-9 to lower the maximum sulfur content from 0.94 percent to 0.17 percent for the fuel burned in these main gas turbines, saying:

Since submission of the permit applications for Pump Station 5, 6, 7, 8, 9, and 11, it has been decided not to use Prudhoe Bay crude oil as a fuel source for the Turbine Drivers - Mainline Pumps. These pump stations will use the same fuel (ASTM No. 1 -GT fuel) as is planned for Pump Stations 10 and 12. This change will result in a lower SO<sub>2</sub> emission from these stations by a factor of four times.

(See page 1 of the October 19, 1974, Therrell letter.)

In a May 1, 1990, letter from Mr. Oscar E. Dickason of Alyeska to Mr. William D. McGee of ADEC, Alyeska states that the sulfur content of the turbine fuel produced at Pump Station 10 and used at Pump Stations 10 and 12 averaged 0.33 percent and ranged from 0.29 percent to 0.4 percent (page 8). Alyeska goes on to say that this range in turbine fuel sulfur content is generally representative of the sulfur content of the turbine fuel produced at Pump Stations 6 and 8, which is used at Pump Stations 5, 6, 7, 8 and 9.

When the SO<sub>2</sub> emissions from the main gas turbines at the 1974 maximum fuel sulfur content of 0.17 percent are compared with the SO<sub>2</sub> emissions at the 1990 maximum fuel sulfur content of 0.4 percent, the increase in SO<sub>2</sub> emissions due to the increase in the fuel sulfur content is approximately 242 tons/yr per turbine for Pump Stations 6-10 and 12 (see Attachment A for calculations).

The net increase in emissions of SO<sub>2</sub> at each pump station is greater than the 40 tons/yr quantity listed in 18 AAC 50.300 (a)(6)(C)(iii). Therefore, the increase in the sulfur content of the fuel burned in the main gas turbines at Pump Stations 6-10 and 12

Mr. James B. Hermiller

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June 18, 1990

represents a modification, as defined by 18 AAC 50.900(28), of a facility described in 18 AAC 50.300(a)(6)(C), and a permit application and review is required in accordance with 18 AAC 50.300(b) and (c) and 50.400(c)(3).

### Volatile Organic Compounds from Crude Oil Storage Tanks

In the 1974 air quality control permit application for the Valdez Marine Loading Terminal (VMT), there is no description or quantification of venting from crude oil storage tanks (December 15, 1988, Sec. 114 response, Vol. I, exh. 1). Furthermore, in the November 19, 1974, Air Quality Control Permit to Operate (Permit # AQC-228), there are no permit conditions allowing the venting of the crude oil storage tanks.

According to the April 1974 Air Quality Summary Report for the VMT (December 15, 1988, Sec. 114 response, Vol. II, exh. 3), hydrocarbon emissions from the crude oil storage tanks would be "virtually eliminated" by the use of an elaborate vapor recovery system which confines and interchanges vapors among the tanks and incinerates any surplus vapor (page 2-1). In the report's summary of miscellaneous sources of hydrocarbon emissions that would be uncontrolled, no mention of crude oil storage tank venting is made (pages 6-7 to 6-8).

After reviewing Alyeska's crude oil storage tank reports for the time period from January 1, 1990, to April 25, 1990, the Department estimates the annual VOC emissions from tank venting to be approximately 350 tons/yr (see attachment B for calculations). This estimate is conservative because it does not account for the lack of venting data for the time period from March 19 to March 25, 1990, when the vapor recovery system was shut down for piping replacements.

Alyeska has changed its method of operation of the crude oil storage tank and vapor recovery system, which is a modification as defined by 18 AAC 50.900(28) of a facility described in 18 AAC 50.300(a)(5)(C), and a permit application and review is required in accordance with 18 AAC 50.300 and (c) and 50.400(c)(3).

When questioned if State or Federal permits were issued allowing crude oil storage tank venting, Alyeska responded in a May 1, 1990, letter from Mr. Oscar E. Dickson of APSCO to Mr. Bill Lamoreaux of ADEC that minor venting has occurred since terminal operations first began in 1977 to relieve overpressure and during emergency situations, upsets, breakdowns, and malfunctions. Alyeska's May 1, 1990, letter goes on to say that the fact that ADEC permitted each crude oil storage tank with breather valves indicates that ADEC anticipated some tank venting would occur as early as 1974.

The Department disagrees with this position for a number of reasons, including the following: