

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 0012

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sentenced to spend a total of 71 days in jail for contempt. Kittles used every artifice available to endlessly question witnesses about irrelevant material and when her turn came to give her side, she talked steadily for two and a half days. The jury - often the target of her accusations of being genetically deficient - took only a couple hours before unanimously convicting her on all 42 counts.

The case drew huge attention from regional media who sent satellite TV trucks to cover the more spectacular parts of the bizarre trial. Kittles is an animal collector a title she now proudly wears despite the testimony of Humane Society of the United States Vice-President Randy Lockwood that animal collectors are much like drug addicts in their pathology, and much more interested in themselves than "their" animals. She is now serving a seven-month jail sentence which also forbids her from owning or even being around animals. She is likely to leave Oregon when released and will probably start collecting somewhere else in the United States.

As D.A. I usually handle murder cases, and Kittles is in my opinion one of the most dangerous, evil people I have ever encountered. She has enough psychosis to be exasperating, and enough cunning to bend the system to her will. Like a really nasty virus, she should be confronted and stopped before she can ruin many lives - of people and dogs.

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## ALASKA

### Collector gets doggone overhaul

**POOCHES:** Volunteers help Richard Hall spay, neuter, adopt out some of his 400 dogs.

The Associated Press

(Published: May 5, 2003)

FAIRBANKS -- Richard Hall's dog yard became more manageable this week after about 100 local volunteers set up an assembly line to spay, neuter, euthanize or adopt out many of the nearly 400 dogs he was keeping.

The volunteers spayed or neutered 70 to 100 dogs a day at a makeshift clinic in the Goldstream Valley.

Hall has roughly 200 dogs left. But he's still mourning the dogs that were put down or released for adoption. Volunteers are caring for the dozens of dogs as they wait for permanent homes.

"There's been a tear or two. It's just kind of sad to walk around and realize ... there's some I shouldn't have parted with," Hall said. "Anyhow, it will get better. I hope."

The endeavor to help Hall downsize and get his dogs physically fit -- some dogs suffered from malnutrition, dehydration and other ailments -- came after Hall told a couple of local veterinarians he was worried about his ability to maintain all his dogs.

The volunteer effort took months to plan. It involved an outpouring of donations from community groups, veterinarians and local businesses.

Animal control officials say there were regular complaints against Hall, but each time he responded. Over the years, the borough has regularly cited Hall for offenses such as dogs that weren't immunized or were running loose.

"Mr. Hall was basically trying to do things to the best of his abilities. He had no malicious intent," said Tim Biaoqane, who oversees animal control for the



Richard Hall had almost 400 dogs on his property in Fairbanks. A community effort spearheaded by the Humane Society of the United States helped spay, neuter or euthanize them. Some were adopted. (Photo by John Hagen / Fairbanks Daily News-Miner)

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Fairbanks North Star Borough.

"He's guilty of having a caring heart," Biggane says, and cracking down didn't seem right.

"When we get into the judiciary process, it's a slow process. It's not beneficial to either party. It takes a lot of time and a lot of money."

Dave Pauli, regional director for the Humane Society of the United States, said the effort involving Hall is a unique one.

Pauli travels the country handling animal crises. He doesn't often respond to multi-animal cases involving a single owner, especially without impetus from the courts.

"Any legal recourse would have been a long, dragged-out affair, and somebody would have had to care for those 400 animals," Pauli said.

"I think Mr. Hall is making great efforts in trying to (compromise). He was wonderful. He made many, many tough decisions each day."

Half of Hall's dogs were euthanized, adopted or put in foster care. Dogs were put down for reasons such as ill temperament or bad health.

A borough animal-control officer is looking after 74 dogs on her property in Fairbanks. Those dogs are available for adoption.

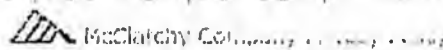
Hall says he misses the dogs that are gone. He was reached by cell phone at a grocery store, where he had stopped to buy hot dogs to use to administer medicine to some of his remaining animals.

Hall doesn't believe in euthanizing dogs, but he's had to compromise that philosophy.

"I was warehousing some man-eaters, some really bad characters," he said. The Humane Society "kind of got me to change the philosophy on some of that stuff."

Hall appreciates the effort to help him: "A bunch of good people volunteered."

Jeanne Olson, a borough veterinarian who helped organize the effort, said volunteers are working to help Hall reorganize his yard and come up with a plan to care for the remaining dogs.



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**UPDATE 1/22/03 on the Montana Collies**  
**Statement by AWCA President Jean Levitt, from Shelby, MT**  
**\*Permission to crosspost\***

**Trial**

At 9 AM opening arguments began. Athena Lethcoe-Harman and John Harman were charged with 181 counts of animal cruelty. The original charge of 182 counts was changed because authorities originally thought there were 11 cats instead of 10.

Defense attorney Scott Albers stressed the importance of the Valiant kennel because of the genetic work Ms. Harman was doing over the past 20 years with collie eye anomaly. He explained she needed a large amount of dogs to carry out her work. He explained the Harmans were moving to Arizona: 1, because of the weather; 2, larger population to sell unneeded dogs to keep number of dogs down. He explained the normal practice in Alaska was to just shoot all dogs no longer needed in a kennel. She chose to truck the excess dogs to Arizona rather than shoot them; 3, more stud dogs available; 4, many Europeans are interested in her dogs. In Arizona she can ship more dogs to Europe; 5, she is diabetic and needed a warmer climate.

Albers stressed how carefully the Harmans planned the trip to ensure it would go well because of the importance of AKC registration.

Prosecutor Merle Raph, assisted by Teton County attorney Joe Coble, called U.S. Customs Inspector Russell Hancock of the Port of Sweetgrass. Hancock testified the Harmans said they were transporting 105 dogs, and that each dog had its own kennel except for a few puppies. Concerned that the dogs needed food and water, he stated he discussed this with Ms. Harman. She replied they didn't have any food. The defense pointed out it had only been 12 hours since they had been last fed and watered. He stated she wanted to buy food, but that it was 10:30 at night and the nearest open store was about 60 miles away. They had some water in a blue plastic barrel. According to the inspector at Sweetgrass, the only food on the truck was in the bottom of the crates soaked in urine and fecal material. Inspector Hancock testified he detained the Harmans to get a veterinarian to check the overall health of the animals. He said it was an unusual case.

Deputy Sheriff Mike Lamie described inching his way to the back of the truck sideways along the filthy narrow aisle after the chainlink fencing panels were removed. He described the urine and fecal material that dripped onto his uniform from the crates piled up on both sides of the truck. He looked into the pens with his flashlight and saw the collies wet with the urine and fecal material. He described the foul smell, the 0 degree temperature, and the frozen condensation on the ceiling of the poorly ventilated truck. He called the Toole County Sheriff's Office in Shelby and reported his findings to then-Undersheriff Donna Matron. He also called in Dr. Hardee Clark, Shelby veterinarian, to assess the condition of the dogs. The portable fence panels from the truck were set up outside, and about 20 dogs were offloaded. He testified Ms. Harman began giving the dogs water, and attempted to scoop out filth in the bottom of some crates. He described two collies separated from the others, not drinking water, and appearing listless. Deputy Lamie testified Dr. Clark asked Ms. Harman why the two dogs appeared unwell, and were separated. She said they were separated because they were recovering from parvo. Deputy Lamie explained he felt a crime was being committed.

Defense attorney Albers pointed out Ms. Harman was diligently watering the 15-20 dogs in the pen, and cleaning their empty crates. He reviewed Deputy Lamie's written report and asked him about his statement, "Frozen particles of liquid in the dogs' fur." Albers explained there had been a flood in Alaska before the Harmans began their trip.

Prosecutor Merle Raph called Dr. James Becker, DVM, the Port of Sweetgrass veterinarian. He described the sanitation - "Very filthy, filthy cages, filthy animals, and some cleaning had taken place before I got there." He assessed the overall condition of the dogs, "...saw one dog basically OUT, couldn't get up, died shortly." His decision: "Must clean up situation as soon as possible and get those dogs treated." He further stated, "Dogs were definitely on the thin side. I wanted to see if these critters were able to stand." He testified he asked Ms. Harman, "What happened?" She explained, "Fire." He testified he asked if she had considered aborting the mission. He testified that she said she didn't think they would make it through the winter in Alaska.

Court was then adjourned until 9 AM Thursday. The trial is expected to last through Friday.

Thea Sperline, professional groomer Kay Bullard, and I drove out to Camp Collie today to see the dogs at lunchtime. They are clean, well fed, and of course continuing to receive veterinary care. The dog with the most serious hernia has had surgery and is recovering nicely. AWCA is proud to be able to pay his bill, and we thank the animal community for making that possible.

Calmly,  
 Jean Levitt, President AWCA  
 Lisa King, AWCA Director AWCA Rescue  
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If you would like to assist AWCA with this rescue effort, you may send a check to:

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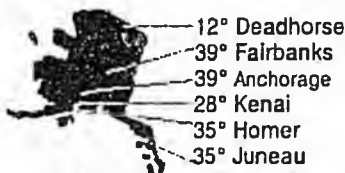
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Web posted Monday, March 3, 2003

## Arizona residents scout out Harmans' new property

By **CAROL BRADLEY**  
*Special to the Peninsula Clarion*

Upset by the saga of the collies in Montana, Diane Troxell of Arizona wondered what type of facility dog owners Jon Harman and Athena Lethcoe-Harman had in mind if and when they relocated their dogs to her part of the world.

To find out, Troxell recently chartered a small airplane. Together with her husband and a friend, she flew over the Harmans' property.

On a flat, barren stretch of high desert south of the tiny town of Woodruff, Ariz., Troxell spied a Quonset hut-style metal building and, adjacent to it, four fenced dog runs.

It's what she didn't see that concerned her.

No source of power. No sign of water. And no shade.

"The metal building doesn't look large enough" to house the dogs, Troxell said in a phone interview with the Great Falls Tribune in Great Falls, Mont. And "if the dogs are outside in the desert sun and it's 100 degrees in the summer, they're going to bake."

The Harmans were moving from Nikiski to Woodruff when U.S. Customs inspectors stopped their tractor trailer late last Halloween night as the couple approached the Canada-Sweet Grass, Mont., border stop.

By morning, the Harmans had been charged with animal cruelty, and by the following night, authorities had removed 166 collies, five other dogs and 10 cats from the tractor trailer.

The dogs were thin, dehydrated, wet, cold and stressed, veterinarians testified during the first trial. A number of the

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dogs were emaciated.

One dog was dead.

The seven-day trial in January resulted in a deadlocked jury and a mistrial. Teton County Justice of the Peace Pete Howard will decide today whether to retry the Harmans on 181 counts of misdemeanor animal abuse.

The Harmans' attorney is asking Howard to dismiss the case and let his clients carry forward with plans to move their large kennel to Arizona.

The collies have been housed at the Marias Fairgrounds outside Shelby, Mont., for the last four months.

But Troxell worries that returning the dogs to the Harmans would only invite more headaches.

"It becomes Arizona's problem if she repeats that pattern of behavior," she said of Lethcoe-Harman.

Neighbors of the Harmans in Nikiski have described their kennel here as a maze of rundown pens and outbuildings, known for its pungent odor and filthy dogs.

Defense attorney Scott Albers portrayed Lethcoe-Harman as a champion dog breeder who let her Valiant Collies kennel swell in size because she was trying to breed out collie eye anomaly, a condition that causes blindness in 2 to 5 percent of collies.

If the Harmans simply had been allowed to drive on through to Arizona, the dogs would have been fine, Albers argued. At one point during the trial he held up a photo of the newly constructed 40-foot-by-40-foot metal building to demonstrate the degree of planning that had gone into the move.

That's not much bigger than the 45-foot-by-8-foot tractor trailer the dogs were driven in the 2,240 miles from Alaska to Montana.

When the mistrial was declared, Troxell tracked down the coordinates of the Harmans' property, which is south of the Navajo Nation and west of the Zuni Indian Reservation in the northeastern section of the state.

It runs along a private dirt road a mile or two off a public dirt road, Troxell said -- impossible to reach by ground without trespassing.

From her seat in the Cessna 172, she snapped photos of the site and mailed copies to Toole County Attorney Merle Raph in hopes he'll use them during the second trial, if one is held.

Two weeks ago, Troxell also e-mailed one of the photos to a collie chat room on the Internet, where the picture generated considerable buzz.

A supporter of the Harmans identified on the chat site as Pennsylvania collie breeder Lauren Wolfe responded that the metal building is insulated and "will or does have" air conditioning. Solar panels will provide electricity, she wrote.

She said the dogs would be let out in groups into the pens, which measure 48-feet by 196-feet, "and will come in to their own private kennels."

Contacted Friday, Wolfe declined to discuss the matter further.

A veterinarian at the Flagstaff Animal Hospital in Flagstaff, Ariz., which is about 100 miles west of Woodruff, said he didn't think the high desert climate would pose a hardship to the long-haired collies.

The Woodruff area is above 5,000 feet, Dr. Fred Bush said.

"It doesn't get too hot and it's real windy," he said. "It would be parasite-free -- like Flagstaff. We don't have ticks, fleas, any of that stuff."

He added that northeastern Arizona escapes terrible winters. "Maybe a little snow. Not much," Bush said. "Six inches would be a lot."

It's uncertain how many collies the Harmans would house at the kennel. After the mistrial was declared, Albers said Lethcoe-Harman was willing to adopt out some 70 of the dogs. She wanted to keep the remaining 100, he said.

Troxell said people can judge for themselves if the Arizona facility looks adequate. A collie owner, she said her own dog can stand "about 20 minutes out on the patio in the summertime" before wanting to come inside.

"I wish I didn't have to take the picture. I'm the kind of person that minds my own business," Troxell said. But "it looks like there were some really abhorrent conditions in Alaska. I don't want that to happen here."

Carol Bradley is a reporter for the Great Falls Tribune.

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## Neighbors say charged couple kept flawed kennel

The Associated Press

ANCHORAGE AP) - Neighbors of two Nikiski collie breeders facing 182 counts of misdemeanor animal abuse say the operation had a notorious reputation in the rural subdivision near Island Lake Road.

But at least two people who bought dogs from Valiant Collies said the animals arrived in fine shape and that they have no complaints.

The kennel was loud and smelled and groups of collies would occasionally escape to roam, according to neighbors interviewed by the Anchorage Daily News.

"I've never, ever, ever seen any one of those dogs in good condition," said Missy Batty, who until recently lived next door to the kennels.

Batty is moving out of the area in part, she said, because of the hassle of living next door to the collie breeders.

The owners, Jonathan Harman, 49, and Athena Ann Lethcoe-Harman, 40, are awaiting a jury trial in Shelby, Mont. They were stopped Oct. 31 at the U.S.-Canada border in Montana while driving from Alaska to Arizona with a semi loaded with 171 dogs and 11 cats.

Authorities say the animals were in bad condition inside the poorly ventilated 40-foot trailer. Many could not walk and some were thin and dirty. One dog was dead.

The Harmans had received a written warning about the condition of their dogs a week earlier while their tractor trailer rig was parked at an Anchorage store, according to Anchorage Animal Control.

The dogs and cats are being fed and walked by residents of Shelby until a trial determines whether the animals can be returned to their owners.

Batty and other neighbors of the Harmans said they didn't like going up to what many call "the collie house" because of its odor, but

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sometimes they had to visit to return escaped collies.

"Those dogs, you could hear them all the time. Several would escape from time to time. They were always really stinky," said Patty Gallien, who lives about half a mile away. "In the summer, when you open a window, you can hear the dogs barking half the night."

Nikiski has no local government and the Kenai Peninsula Borough does not have animal control powers.

Gallien said she has lived there for 12 years and the collies have been there the entire time.

Despite citing frustrations over dealing with the nuisance, neighbors of the Harmans expressed empathy for Athena Harman, describing her as a person who loved her dogs but who was so disabled by chronic diabetes that she may not have been able to cope with the responsibility.

A former kennel employee told the Great Falls, Mont. Tribune said he worked for the Harmans for 10 years, until he was 18, but quit in disgust.

Brett Encelewski, 21, said kennel conditions were decent when he started, but worsened over the years. Toward the end, he said, Lethcoe-Harman took special care of about a dozen of her favorite dogs, but kept the rest in overcrowded and filthy pens.

However, collie breeders Darlene Kerr of Regina, Sask., and Dana Giles of Nova Scotia told the Montana newspaper that dogs they acquired from Lethcoe-Harman were healthy, well-cared for and arrived in fine shape. Both said they had not visited her breeding business in Alaska.

"To say her dogs are abused, I'm sorry, I can only speak from what I've seen, but Shiloh (the first dog she got from Lethcoe (Harman)- was in excellent condition," she said.

Lethcoe-Harman is a member of the Normal Eyed Network and has been breeding her dogs to eliminate genetic problems such as Collie Eye Anomaly, an eye disorder that can cause blindness.

Kerr said Shiloh has produced five normal-eyed collies, four of which are champions. She said some breeders are criticizing Lethcoe-Harman harshly on Internet chat rooms.

"This woman is not what they're saying she is," Kerr said. "They're crucifying her. For years, Athena has been outspoken about the thing you can defeat, Collie Eye Anomaly. She has been very vocal about breeding for health."

Giles said she bought three collie puppies from Lethcoe-Harman in 1997 and 1998 and the puppies arrived in excellent shape. She said canine ophthalmologists raved about the dogs and the condition of

their eyes.

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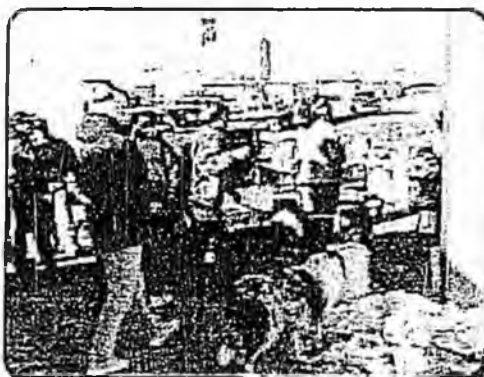
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# Animal cruelty case points need for tougher laws

Montana volunteers are caring for the collies and other animals found in the Harmans' truck, and the effort is straining local resources.

Lynn Melling

Anchorage, Alaska, Nov. 8 - John and Athena Harman of Nikiski are awaiting trial in Montana, charged with animal cruelty after being arrested at the Canadian border last week.

The SPCA says, as the Harmans were heading out of town, they were stopped by Animal Control and told to clean things up. They left town anyway, only to be stopped at the border.

Volunteers in Montana are now nursing the Harmans' dogs back to health -- nearly 200 of them. The effort is taking a toll on financial and emotional resources there.

Alaska animal advocates are appalled by the Harmans' story, and say the warning signs were sitting in Nikiski for years. They also say it's time to strengthen Alaska's animal cruelty laws.

At the end of a narrow dirt road in the woods outside Nikiski sits the Harman place -- a plot of land littered with

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everything from crates and rugs to old cars. It's the remains of a now defunct dog breeding kennel known as Valiant Collies.

"Like a pigpen, there was just muck everywhere," says Stephanie Batchelder, a dog groomer who worked for the Harmans about 10 years ago.

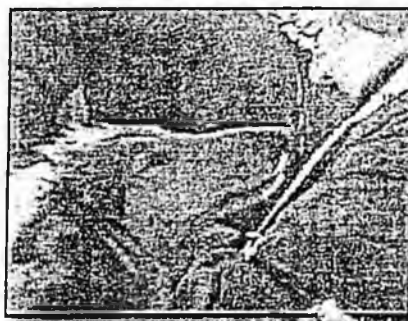
Batchelder says the dogs were in such bad condition, she lasted only a day.

"They had to have been unhealthy, being that wet and having feces on them all the time. They're going to get sores," she said.

There's little evidence now, but pictures show several dogs at a time crammed into small fenced-in areas.

Concerned neighbors only add to the picture. One woman says the place appeared to have been hot-wired -- with jumper cables hung from wire kennels. She suspects they were hooked to a battery and used to jolt the animals, to keep them under control.

It came as no surprise to some in the Nikiski area that the Harmans were arrested for animal cruelty in Sweet Grass, Montana, last week. U.S. Customs officials caught them at the Canadian border on a trip from Alaska to Arizona, with more than



Courtesy Photo, KTUU

A volunteer in Montana makes a friend.

170 dogs and 11 cats packed from top to bottom in a semi-trailer -- sick and living in their own waste.

"I could've seen it coming, definitely," says Batchelder.

The Harmans face more than 180 misdemeanor counts of animal cruelty, a situation animal advocates say could have been prevented.

"It's just not right," says Diane Zarfoss of the Alaska Society for the Prevention of Cruelty to Animals. Zarfoss says the SPCA has dealt with complaints about the Harmans for years, but Alaska's laws made it nearly impossible to do anything to stop the neglect.

According to Alaska State Troopers, the law on animal cruelty states: A person cannot "intentionally inflict pain or cause prolonged suffering on an animal," nor can someone fail to care for an animal to the extent it results in the animal's death or suffering.

Violation of this law is a class A misdemeanor offense. Animal advocates say the statute doesn't do animals justice.

"They really can't do a whole lot unless they can prove that they were doing the neglect on purpose," says Batchelder.

Advocates also say the weak law is not the only problem. State enforcement should be stepped up, too.

"We can't rely on troopers to provide this service," says

Zarfoss.

Troopers are responsible for inspecting complaints of animal neglect outside the limits of a city with an animal control operation. Both advocates and troopers themselves say this puts a strain on already thin resources.

"We're short of people and, obviously, the population in this neck of the woods is growing," says First Sgt. Chuck Bartolini of the Soldotna trooper detachment.

Bartolini says they do the best they can to respond to calls of animal cruelty. Fortunately, he says, few such calls are received. He says a trooper inspected the Harmans' kennel almost two years ago, and, in the officer's opinion, the dogs were adequately cared for. Bartolini says that if there appears to be abuse, troopers will call in an animal expert. He'd like to see such a person on the borough's staff.

"It would help us greatly if the borough had some sort of enforcement power, and an animal control officer that could actually investigate these cases and take the time," Bartolini says.

Zarfoss wants to take that idea even further and hire a state humane officer, someone to deal strictly with animal cruelty cases, and who is authorized to step on private property and stop neglect as soon as complaints come in. She says lawmakers could complete the package with more clearly defined laws to support that person.

"It's getting worse. It's getting larger numbers and it's getting way out of hand," says Zarfoss.

She recalls the Carolyn Boughton case, in which a Sterling woman was charged with neglecting 66 dogs and some other animals. The animals were rescued by the SPCA a year ago this month, but the cruelty case has yet to go to trial.

"It's still in the courts. Nothing has been done," says Zarfoss. She fears the Harman case will drag on for a long time, as well.

Meanwhile, the dogs being cared for in Montana still belong to the Harmans unless they're proved guilty in court. In the meantime, the dogs -- now recovering from a traumatic trip across the border -- will have to wait to go home, wherever that turns out to be.

Currently, the Harmans are out on bond. People in the Nikiski area say John Harman may be back in Alaska, but he wasn't at his property when Channel 2 News stopped by, and the couple could not be reached for comment on this story.

To outsiders, the Harmans' breeding operation seemed to be quite professional. The couple has won competitions, and their Web site tells others how to care for dogs.

Some neighbors say they believe the Harmans had good intentions but the operation just spun out of control. Others say, quite frankly, they think the couple was running a puppy mill, breeding huge numbers of dogs to sell. The Harmans' Web site lists prices of up to \$2,000 per dog, or more.

Animal advocates say puppy mills are not unusual in Alaska and the only way they're going to be stopped is if people stop buying puppies from pet stores. Pet stores disagree that the puppies they buy are raised in inhumane conditions.

Another question to be investigated is whether the Harmans' Nikiski operation was cruel, or whether it was simply a matter of how the Harmans chose to transport the dogs as they were moving out of state.

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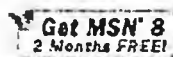
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## Alaskan Couple Found Guilty of Animal Cruelty in Second Trial



Alaska.

Call it the tale of two trials.

On January 30, a Toole County, Montana, jury could not reach an unanimous decision in the misdemeanor trial of Jonathan Lewis Harman and Athena Lethcoe-Harman; the Alaskan couple was charged with 180 counts of animal cruelty for transporting 169 dogs and 11 cats in an unventilated tractor-trailer while apparently providing little food, water or veterinary care. Many of the animals suffered from one malady or another, from dehydration to malnutrition, and before the Harmans were finally stopped at the U.S.-Canadian border, one dog had died during the couple's 2,000-mile-plus trip from

The six deadlocked jurors forced Toole County Justice of the Peace Janice Freeland to declare a hung jury after the seven-day trial. The decision was "initially devastating," remembers Dave Pauli, director of the Northern Rockies Regional Office, who helped coordinate the rescue and sheltering of the animals and who testified at the trial. "We couldn't understand why the jury let them off the hook."

Fast-forward to late May in the Anaconda-Deer Lodge County courthouse, where the Harmans' second trial was moved due to the huge amount of publicity in Toole County. The prosecutors' incomprehension following the hung jury in January was now supplanted with a renewed focus on how to convince a six-person jury that the Harmans were guilty.

Five days later, on May 31, a Deer Lodge County jury deliberated less than two hours and unanimously convicted the Harmans on 180 counts each of animal cruelty. The shock of January had turned into jubilation. A small courtroom audience reportedly erupted into cheers and applause.

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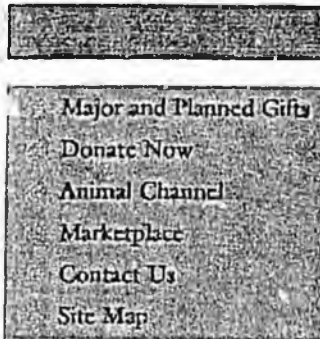
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So why the drastic difference between the two trials? According to Pauli and a published report in the *Great Falls Tribune*, it probably boiled down to a few things: the evidence introduced (or not introduced), the witnesses called, the length of trial, the jury instructions, a different judge, and possibly a more receptive political environment thanks in part to The HSUS's help in advancing a tougher animal cruelty bill through the Montana legislature.

In the original trial, Pauli noted, the prosecution focused almost exclusively on a 48-hour window when the animals were confiscated at the border and then treated for a variety of ills. The approach proved to be too limiting when the defense team introduced witnesses who testified about Lelhcoe-Harman's "show-dog record" and efforts to "weed out" a disease called Collie Eye Anomaly; the defense even took the jury to "Camp Collie," a temporary shelter in Shelby, where the dogs, after several months of care by rescue volunteers, "looked like Lassie," Pauli said.

In the second trial, the prosecution successfully filed motions to block much of the defense team's tactics, including a jury visit to "Camp Collie II," where the animals had been transferred since the first trial. (Read "Camp Collie II: Great Falls, Montana, New Home to Rescued Animals" below.) Perhaps more important, Pauli added, was the fact that the prosecution expanded its case to present witnesses who encountered the Harmans earlier in their trip, well before the couple was stopped at the border.

These witnesses proved crucial, Pauli said. One witness, an animal control officer, approached the Harmans in a Wal-Mart parking lot in Anchorage, less than three hours into their trip. When the couple allegedly couldn't present the correct paperwork, including rabies and health certificates, the officer gave the Harmans a 24-hour warning to secure the documents. When he returned, Pauli said, the Harmans were long gone. Another prosecution witness testified to the poor conditions of their rig, long before the Harmans approached U.S. territory.

Pauli's own testimony focused primarily on the transport of these animals. He believed that the sheer act of transporting 180 animals for many days in an unventilated tractor-trailer—one in which many of the animal carriers were not affixed to the walls or floor—constituted animal cruelty. But under the state's misdemeanor animal cruelty law, Pauli said, the Harmans had to be convicted of only one of several possible cruelties. One of those is inhumane transport.

Unfortunately, the Harmans could not be tried under Montana's new felony-level animal cruelty law, which Governor Judy Martz signed into law in April. The law won't become effective until July 1, so its tougher penalties couldn't apply to the Harmans. At their June 6 sentencing the Harmans were each given a ten-year suspended jail term in exchange for relinquishing all but three of their 191 animals and waiving their right to an appeal, a process that could have further prolonged the case (Under Montana law, justice court misdemeanor cases can be immediately appealed to state District Court.)

While the Harmans could have been required to pay up to \$500 for each misdemeanor count, the couple was not fined or told to repay thousands of dollars to Toole County to cover the costs—estimated at \$1,000 a day—of caring for the animals (although the county apparently covered only part of those costs; the rest have been paid by animal groups or through private donations).

Perhaps most important however, the sentencing agreement prohibits the Harmans from owning any other animal other than the two dogs and one cat that will be returned to them for the next ten years. They are also forbidden to breed any animal during that period.

Even though the Harmans won't suffer the stiffer penalties, the couple's case did help instigate the tougher animal cruelty law, Pauli noted. The original bill, he said, was stalled in a House subcommittee when the hung jury was announced in January. The public outrage was palpable.

The HSUS and other animal organizations pounced on that public sentiment and coordinated an e-mail and letter-writing campaign targeting the tougher cruelty bill. The lobbying pressure worked: Despite the current conservative nature of the Montana legislature, not to mention the conservative nature of the specific agriculture subcommittee where the bill was stalled, the proposed legislation made its way through the full House and to the Senate. It didn't make it out of the legislature, Pauli noted, until the last day of the session, an indication of the political resistance toward the bill.

The law not only calls for tougher penalties—it also allows the legislation to be applied to those with ten or more animals in their possession. "This will be huge in helping us deal with animal hoarder cases in the future," Pauli added.

But as for the present, prospects for the dogs and cats have already improved. The HSUS, the American Working Collie Association and other groups are helping to coordinate adoption clinics to handle the thousands of offers to adopt the Harmans' former charges. With the possibility of an appeals trial removed, the animals can now be adopted out into loving homes.

That might be the ultimate sign of justice.

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More Local weather

# Trial in animal cruelty case now slated for January

## Staff report

A trial has been scheduled for the week of Jan. 22 in Kenai District Court for a woman charged with nine counts of animal cruelty.

Judge Jonathan H. Link granted a request to postpone the trial call, which had been scheduled for Nov. 25.

Carolyn F. Boughton, 57, was charged after Alaska State Troopers allegedly found 66 filthy and underfed dogs under Boughton's care in Sterling in November 2001.

Boughton reportedly was living in Nikiski and commuting to Sterling to feed and provide water for the dogs.

According to court documents, some of the dogs were found dead, some in need of immediate medical care and some had to be put to death.

Troopers seized the dogs.

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 Case Photos: [Available - Click Here](#)

Accused Abuser(s):  
[Caroline Boughton](#)

### Case Report

Alaska State Troopers are threatening to seize at least 45 dogs owned by a Sterling woman who has been accused of animal abuse for the last year.

Troopers said they found four dead dogs, two dead cats and scores of dogs needing basic care during a tour on Monday of a wooded lot where Sterling resident Caroline Boughton keeps her animals. They set an ultimatum.

As many as 20 dogs, purebred bouvier des Flandres and Kerry blue terriers, were kenneled in double-decker plywood pens inside a ramshackle Greyhound-style bus that was so fouled by urine and feces that the ammonia-like stench nearly brought tears to the eyes of veterinarian Jerry Nybakken, who assisted troopers serving a search warrant.

Two of the terriers had been killed by a bouvier, which gnawed through the plywood roof of its crate to get at the smaller dogs housed overhead. The body of one of the terriers was firmly wedged in a hole and its legs had been chewed from below, Nybakken said.

The rest of the dogs -- which included a mix of mutts and huskies -- were chained, cabled and roped to trees, trucks and other objects. Some were in much better shape than others.

Few of the dogs had shelter. Food and water bowls were overturned and appeared unattended, Nybakken said. Warm bedding such as straw was absent. Inside the bus, the dogs' fur was matted and covered with feces and every pen was wet with urine, he said.

"I think we have a case here of neglect, bordering on cruelty," Nybakken said on Tuesday. "My personal opinion is, Caroline should never have this many dogs," he said. "If she wants dogs, she's going to have to keep them within her economic means to support them."

Boughton said she still enjoys her dogs, has done nothing wrong and is struggling to juggle the demands of her landlords, whom she said insisted she kennel her dogs in the bus.

Her landlords, Milton and Lee Ross, say Boughton owes them \$1,350 in back rent and pay for helping to feed the dogs. The Rosses live on the lot and agreed to let

Boughton pay them to keep her dogs there, but now say they want her out.

Boughton, who lives nearby, said she has nowhere to go. It's hard finding a rental when you've got dozens of dogs, she said.

The Texas transplant first got into trouble last fall after a Kenai Peninsula animal cruelty organization accused her of neglect for keeping her dogs in a Sterling junkyard. She quickly hired some helpers who got straw for the dogs and began feeding them. At the time, troopers deemed her care adequate.

But after Boughton moved her animals to a 2.6-acre wooded property on Spruce Lane outside Sterling, the barking, fighting and loose dogs soon prompted angry calls from her new neighbors.

Two chapters of the Society for the Prevention of Cruelty to Animals, the Alaska chapter based in Anchorage and a newly formed Kenai Peninsula group, have been struggling to help Boughton's dogs, with different tactics.

The Alaska chapter has been working with Boughton for months, helping her reduce her kennel size a few dogs at a time, said Nancy Wall, the chapter's Peninsula volunteer.

The Kenai organization has been more direct. It was the group that first demanded action last fall, and it also called in the troopers this week.

Its founder, Michele DeMilta, accepted four or five of Boughton's sickest dogs. Those dogs were to be taken to a veterinarian for treatment and documentation, Nybakken said. DeMilta declined to comment until the situation is resolved.

Troopers said they would like to come back Friday and see that Boughton is providing adequate care for her animals. But Tressler said that if they get another complaint about her, they will seize her dogs.

Just what would happen with the dogs if they are seized isn't clear. Even the official number of dogs is vague. Troopers estimated that about 45 dogs were on the property. Boughton said she had many more than that. And Nybakken guessed the number might be closer to 100.

"What a mess, huh?," said Judy McConnell of Anchorage, the American Bouvier des Flandres Club's designated rescue person for the region. "This whole thing was been a nightmare for a year, as far as I'm concerned."

If a court were to make to final ruling, McConnell said, the nationwide club has the finances, expertise and contacts to place whatever dogs were deemed suitable.

Alaskans are accustomed to sled dog yards, and while that sort of kennel works with active teams of huskies, it isn't appropriate for bouviers, she said. The independent breed has a tough side and needs a lot of one-on-one love, she said.

McConnell and other bouvier fanciers describe Boughton as a "collector," a person with a good heart who wants to protect animals but lets them breed and gets overwhelmed when their numbers swell.

Two of Boughton's dead dogs are bouviers. One was found at the end of its cable tether wearing a spiked choke collar, but Nybakken said he was unsure what caused the death. The other was found with three of its paws tangled in nylon rope, he said.

Boughton, feeding Atta Boy to her dogs Tuesday evening, said she suspected foul play in both cases and wanted an autopsy on the dogs' frozen carcasses, still laying on the ice. "Both of those dogs were very active the day before yesterday," she said.

"All of a sudden they're dead, overnight. I'd like to learn why."

Troopers said a report would be forwarded to the Kenai district attorney's office for consideration of possible charges of animal cruelty, a misdemeanor. Boughton said she has tried to give away her dogs, but had no luck.

She said she refuses to take them to the pound because some would inevitably be put down. I've got too big of a heart," Boughton said. "All I want for them is a home."

### Case Updates

Posted: Apr 22, 2003 - 5:49 PM

The Boughton trial has once again been postponed. The Judge did give admonishment that Ms. Boughton needs to work with her doctors so that she can be lucid even if in some discomfort by the new trial call date of 7/25 and trial set for 8/5.

Posted: Feb 5, 2003 - 9:49 AM

Boughton rescue trial has been postponed until 4/22/03

### References

- [Anchorage Daily News](#)

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## ALASKA

### Owner again accused of neglect

**DOGS: Sterling woman has until Friday to improve living conditions for pets.**

By Jon Little  
Anchorage Daily News

*(Published: November 7, 2001)*

Sterling -- Alaska State Troopers are threatening to seize at least 45 dogs owned by a Sterling woman who has been accused of animal abuse for the last year.

Troopers said they found four dead dogs, two dead cats and scores of dogs needing basic care during a tour on Monday of a wooded lot where Sterling resident Caroline Boughton keeps her animals. They set an ultimatum.

"She's got till Friday to make living conditions for those dogs better, or we will seize the dogs," said Trooper 1st Sgt. Charles Tressler.

As many as 20 dogs, purebred bouvier des Flandres and Kerry blue terriers, were kenneled in double-decker plywood pens inside a ramshackle Greyhound-style bus that was so fouled by urine and feces that the ammonia-like stench nearly brought tears to the eyes of veterinarian Jerry Nybakken, who assisted troopers serving a search warrant.

Two of the terriers had been killed by a bouvier, which gnawed through the plywood roof of its crate to get at the smaller dogs housed overhead. The body of one of the terriers was firmly wedged in a hole and its legs had been chewed from



A bouvier des Flandres, a shaggy herding and cattle dog, is among dozens of dogs tied outside without bedding in a Sterling area yard on Tuesday. Alaska State Troopers have told the dogs' owner, Caroline Boughton, to improve the conditions or risk the seizure of her animals.

*(Photo by Jon Little / Anchorage Daily News)*

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below, Nybakken said.

The rest of the dogs -- which included a mix of mutts and huskies -- were chained, cabled and roped to trees, trucks and other objects. Some were in much better shape than others.

Few of the dogs had shelter. Food and water bowls were overturned and appeared unattended, Nybakken said. Warm bedding such as straw was absent.

Inside the bus, the dogs' fur was matted and covered with feces and every pen was wet with urine, he said.

"I think we have a case here of neglect, bordering on cruelty," Nybakken said on Tuesday.

"My personal opinion is, Caroline should never have this many dogs," he said. "If she wants dogs, she's going to have to keep them within her economic means to support them."

Boughton said she still enjoys her dogs, has done nothing wrong and is struggling to juggle the demands of her landlords, whom she said insisted she kennel her dogs in the bus.

Her landlords, Milton and Lee Ross, say Boughton owes them \$1,350 in back rent and pay for helping to feed the dogs. The Rosses live on the lot and agreed to let Boughton pay them to keep her dogs there, but now say they want her out.

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Its founder, Michele DeMilta, accepted four or five of Boughton's sickest dogs. Those dogs were to be taken to a veterinarian for treatment and documentation, Nybakken said. DeMilta declined to comment until the situation is resolved.

Troopers said they would like to come back Friday and see that Boughton is providing adequate care for her animals. But Tressler said that if they get another complaint about her, they will seize her dogs.

Just what would happen with the dogs if they are seized isn't clear. Would they go to an animal shelter until the courts make a final ruling? Would they be sent one or two at a time to rescue homes? Troopers aren't certain.

Even the official number of dogs is vague. Troopers estimated that about 45 dogs were on the property. Boughton said she had many more than that. And Nybakken guessed the number might be closer to 100.

"What a mess, huh?," said Judy McConnell of Anchorage, the American Bouvier des Flandres Club's designated rescue person for the region. "This whole thing was been a nightmare for a year, as far as I'm concerned."

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Boughton said she has tried to give away her dogs, but had no luck. She said she refuses to take them to the pound because some would inevitably be put down.

I've got too big of a heart," Boughton said. "All I want for them is a home."

Reporter Jon Little can be reached at [jlittle@adn.com](mailto:jlittle@adn.com) or at 907-260-5248.

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More Local Weather

## Sterling woman charged with animal cruelty

ANCHORAGE (AP) -- A Sterling woman has been charged with nine criminal counts of animal cruelty for keeping dozens of underfed, filthy dogs

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Alaska State Troopers found 66 dogs under Caroline Boughton's care in a Sterling yard last November.

According to court documents some of the dogs were found dead, others needed prompt medical care and still others were so sick they had to be euthanized. Troopers seized the dogs.

**Boughton**, is scheduled to go to trial Oct. 29 in Kenai.

Animal welfare activists who treated **Boughton's** dogs and placed them in new homes say there is easily enough videotape and documentation to support those charges.

"It's pretty cut and dried. We have records on each and every animal on the property that was taken in," said Diane Zarfoss, clinic director of the Alaska Society for the Prevention of Cruelty to Animals.

**Boughton** was reportedly living in Nikiski and commuting to the site to feed and to provide water for the dogs. Most were bouvier des Flandres and kerry blue terriers. A couple of bouvier carcasses were found tangled in tethers, and two terriers stored in wooden boxes had died and were partially eaten by another dog.

The rest were in varying states of health, but all suffered from malnutrition, Zarfoss said. Many were treated for eczema, skin mites and infections of the ears and eyes.

Dogs that were strong enough to recover have all been placed. The last -- a bouncy, 100-pound malamute mix -- was scheduled to arrive at its new home today, she said.

**Boughton** was the subject of troopers investigations for a year before she agreed to give up her dogs. In fall 2000, she was criticized for keeping the animals tied to wrecked cars in a Sterling junkyard before moving them across the Sterling Highway to another location.

Troopers were called once more, this time during a cold snap last November that drove temperatures down to 20 below zero.

A troopers report said officers wanted to look inside a large bus that **Boughton** had converted into an animal carrier. She said she forgot the key. They cut a lock off the door and were forced back by the ammonia-like stench of urine until the vehicle was ventilated, the report said.

Sixteen dogs were kept inside wooden boxes in the bus without food, water or dry bedding. They were covered in frozen urine and feces.

A few days after the inspection, an Alaska SPCA volunteer who had worked with **Boughton** over the months persuaded her to turn over her animals voluntarily.

The resulting rescue cost the Alaska SPCA about \$30,000, Zarfoss said. The group wants to see **Boughton** convicted, punished and made an example, she said. Alaska SPCA gets 10 to 12 calls a year about large-scale problems but cannot handle them all.

"She's proved over the last 10 years or plus that she is not a responsible animal owner," Zarfoss said.



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May 13, 2003

1

**HB 277**

*Pipeline Utilities  
Regulation*

**CS FOR HOUSE BILL NO. 277(RES)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTY-THIRD LEGISLATURE - FIRST SESSION**

**BY THE HOUSE RESOURCES COMMITTEE**

**Introduced:**

**Referred:**

**Sponsor(s): Representatives Dahlstrom, Kohring**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to the authority of the commissioner of natural resources concerning**  
2 **the investigation of certain leases issued by the state; relating to the powers and**  
3 **jurisdiction of the Regulatory Commission of Alaska in regard to intrastate pipeline**  
4 **transportation services, pipeline facilities, and pipeline carriers; relating to the rate of**  
5 **interest for funds to be paid by pipeline shippers or carriers at the end of a suspension of**  
6 **tariff filing; relating to the duties and powers of the attorney general regarding pipeline**  
7 **tariff matters and proceedings; relating to the application of orders affecting rates of**  
8 **regulated pipeline carriers; and providing for an effective date."**

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

10 **\* Section 1. AS 38.05.020(b) is amended to read:**

11 **(b) The commissioner may**

12 **(1) establish reasonable procedures and adopt reasonable regulations**

1 necessary to carry out this chapter and, whenever necessary, issue directives or orders  
2 to the director to carry out specific functions and duties; regulations adopted by the  
3 commissioner shall be adopted under AS 44.62 (Administrative Procedure Act);  
4 orders by the commissioner classifying land, issued after January 3, 1959, are not  
5 required to be adopted under AS 44.62 (Administrative Procedure Act);

6 (2) enter into agreements considered necessary to carry out the  
7 purposes of this chapter, including agreements with federal and state agencies;

8 (3) review any order or action of the director;

9 (4) exercise the powers and do the acts necessary to carry out the  
10 provisions and objectives of this chapter;

11 (5) notwithstanding the provisions of any other section of this chapter,  
12 grant an extension of the time within which payments due on any exploration license,  
13 lease, or sale of state land, minerals, or materials may be made, including payment of  
14 rental and royalties, on a finding that compliance with the requirement is or was  
15 prevented by reason of war, riots, or acts of God;

16 (6) classify tracts for agricultural uses;

17 (7) after consulting with the Board of Agriculture and Conservation  
18 (AS 03.09.010), waive, postpone, or otherwise modify the development requirements  
19 of a contract for the sale of agricultural land if

20 (A) the land is inaccessible by road; or

21 (B) transportation, marketing, and development costs render  
22 the required development uneconomic;

23 (8) reconvey or relinquish land or an interest in land to the federal  
24 government if

25 (A) the land is described in an amended application for an  
26 allotment under 43 U.S.C. 1617; and

27 (B) the reconveyance or relinquishment is

28 (i) for the purposes provided in 43 U.S.C. 1617; and

29 (ii) in the best interests of the state ;

30 (9) lead and coordinate the investigation of the performance of  
31 obligations under and compliance with the terms of leases issued by the state

1           under this title, including obligations with respect to the dismantlement, removal,  
2           and restoration of a pipeline or pipeline facility.

3           \* Sec. 2. AS 42.06.140(a) is amended to read:

4                   (a) The commission

5                           (1) shall regulate pipelines and pipeline carriers in the state;

6                           (2) may investigate, upon complaint or its own motion, the rates,  
7                           classifications, rules, regulations, prices, services, practices, and facilities of pipeline  
8                           carriers [, AND THE PERFORMANCE OF OBLIGATIONS UNDER AND  
9                           COMPLIANCE WITH THE TERMS OF LEASES ISSUED BY THE STATE];

10                          (3) may make, prescribe, or require just, fair, and reasonable rates,  
11                          classifications, regulations, practices, services, and facilities for pipeline carriers;

12                          (4) may require pipeline carriers and affiliated interests to file with the  
13                          commission reports and other information and data required or permitted to be  
14                          required by other provisions of this chapter;

15                          (5) may adopt regulations that are necessary and proper to the  
16                          performance of its duties under this chapter, including regulations governing practices  
17                          and procedures of the commission; the regulations may not be inconsistent with state  
18                          law;

19                          (6) shall, during normal business hours, have access to and may  
20                          designate any of its employees, agents, or consultants to inspect and examine the  
21                          accounts, financial and property records, books, maps, inventories, appraisals,  
22                          valuations, and related reports kept by a pipeline carrier, or kept for it by others, that  
23                          directly affect the interests of the state and directly relate to pipelines located in the  
24                          state;

25                          (7) may initiate, intervene in, and appear personally or by counsel and  
26                          offer evidence in and participate in [,] any proceedings involving a pipeline carrier [,]  
27                          and affecting the interests of the state, before any officer, department, board,  
28                          commission, or court of this state;

29                          (8) shall require permits for the construction, enlargement in size or  
30                          operating capacity, extension, connection and interconnection, or operation [OR  
31                          ABANDONMENT] of any oil or gas pipeline facility or facilities, subject to necessary

1 and reasonable terms, conditions, and limitations;

2 (9) may prescribe the system of accounts and regulate the service of an  
3 oil or gas pipeline facility;

4 (10) shall provide all reasonable assistance to the Department of Law  
5 in intervening in, offering evidence in, and participating in proceedings involving a  
6 pipeline carrier or affiliated interest and affecting the interests of the state, before an  
7 officer, department, board, commission, or court of another state or the United States.

8 \* Sec. 3. AS 42.06.230 is amended by adding a new subsection to read:

9 (c) Notwithstanding any other provision of this chapter, the commission does  
10 not have jurisdiction over a pipeline carrier with respect to the dismantlement,  
11 removal, and restoration of any part of a pipeline facility, or over any amount  
12 collected or held by a pipeline carrier for performing dismantlement, removal, and  
13 restoration except amounts included in a pipeline carrier's intrastate rates.

14 \* Sec. 4. AS 42.06.245 is amended to read:

15 Sec. 42.06.245. Federally regulated carriers. The requirements of this  
16 chapter pertaining to permits and certificates of public convenience and necessity do  
17 not apply to the construction of a pipeline facility exclusively subject to federal  
18 jurisdiction or to the interstate portion of the business of a pipeline or pipeline carrier  
19 [EXCLUSIVELY] subject to federal jurisdiction, including rates, tariffs, charges,  
20 classification, rules, regulations, terms, and conditions pertaining to the interstate  
21 portion of the business subject to federal jurisdiction. However, the requirements  
22 of this chapter for permits and certificates of public convenience and necessity do  
23 apply to [ALL] the intrastate portion of the business of a pipeline or pipeline carrier  
24 subject to federal jurisdiction to the extent the pipeline or pipeline carrier is  
25 engaged [WHENEVER IT ENGAGES] in intrastate commerce, including rates,  
26 tariffs, charges, classification, rules, regulations, terms, and conditions pertaining  
27 solely to the intrastate portion of the business. The commission may not base  
28 intrastate rates on revenue collected in interstate transportation. However,  
29 nothing in this section limits the powers of the commission to consider both  
30 interstate and intrastate pipeline revenue requirements as needed to determine  
31 what costs may be recovered by a pipeline carrier through intrastate rates [SET

1 OUT IN THIS CHAPTER EXCEPT TO THE EXTENT THEY ARE PREEMPTED  
2 BY FEDERAL LAW].

3 \* Sec. 5. AS 42.06.290(a) is amended to read:

4 (a) A pipeline carrier may not abandon, [OR ] permanently reduce capacity,  
5 [DISCONTINUE USE OF ALL OR ANY PORTION OF A PIPELINE OR  
6 ABANDON] or discontinue any service rendered by means of a pipeline that is the  
7 subject of a certificate of convenience and necessity [,] without the permission and  
8 approval of the commission, after due notice and hearing, and a finding by the  
9 commission that continued service is not required by public convenience and  
10 necessity. Any interested person may file with the commission a protest or  
11 memorandum of opposition to or in support of discontinuance, [OR] abandonment, or  
12 reduction in transportation services. The commission may authorize temporary  
13 suspension of a service or of part of a service.

14 \* Sec. 6. AS 42.06.400(b) is amended to read:

15 (b) An order suspending a tariff filing may be vacated if, after investigation,  
16 the commission finds that it is, in all respects, proper. Otherwise, the commission  
17 shall hold a hearing on the suspended filing and issue its order, before the end of the  
18 suspension period, granting, denying, or modifying the suspended tariff in whole or in  
19 part. If an initial tariff is suspended, the commission shall establish a reasonable  
20 temporary tariff. The commission may allow the collection of the filed initial tariff, or  
21 it may require collection of the temporary tariff. If the commission allows collection  
22 of the filed initial tariff, it shall require the pipeline carrier to place the revenue  
23 representing the difference between the filed tariff and the temporary tariff in escrow  
24 in a financial institution approved by the commission, and keep accurate accounts of  
25 all amounts received, specifying by whom and in whose behalf the amounts are paid.  
26 At the end or vacation of the suspension period, the amount, if any, owing to the  
27 pipeline carrier from the difference between the temporary tariff and the permanent  
28 tariff shall be paid to the pipeline carrier. The surplus, if any, shall be refunded to the  
29 persons in whose behalf the amounts were paid into escrow. Funds may not be  
30 released from escrow without the commission's prior written consent and instructions  
31 to the escrow agent. The commission may allow the pipeline carrier, at the carrier's

1 expense, to substitute a bond or letter of credit in lieu of the escrow requirement. If  
2 the commission requires collection of the temporary tariff, it shall require the shipper  
3 to place the revenue representing the difference between the filed initial tariff and the  
4 temporary tariff in escrow in a financial institution approved by the commission, and  
5 require that accurate accounts similar to those specified above in this section be kept  
6 by the carrier and the shipper. The person owing shall pay the person owed to the  
7 satisfaction of the commission within 30 days after the commission order allowing or  
8 setting a permanent tariff. The amount, if any, by which the permanent tariff exceeds  
9 the temporary tariff shall be paid by the shipper to the carrier, or, if the temporary  
10 tariff exceeds the permanent tariff, the difference shall be paid by the carrier to the  
11 shipper, and in either event such payment shall be made with interest calculated on the  
12 balance due at the end of each calendar month [AT THE LEGAL RATE, AS  
13 DEFINED IN AS 45.45.010(a)]. The applicable rate of interest is five percentage  
14 points above the 12th Federal Reserve District discount rate in effect on  
15 January 2 of each year for which payments are due and for which the interest is  
16 being computed, unless the parties have agreed in writing that another rate of  
17 interest applies. The commission may allow the shipper, at the shipper's expense, to  
18 substitute a bond or letter of credit in place of the escrow requirement.

19 \* Sec. 7. AS 42.06.410(a) is amended to read:

20 (a) When the commission, after an investigation and hearing, finds that a rate  
21 demanded, observed, charged, or collected by a pipeline carrier for a service, subject  
22 to the jurisdiction of the commission, or that a classification, rule, regulation, practice,  
23 or contract affecting the rate, is unjust, unreasonable, unduly discriminatory, or  
24 preferential, the commission shall determine a just and reasonable rate, classification,  
25 rule, regulation, practice, or contract to be observed or allowed and shall establish it by  
26 order. An order setting rates under this section may not affect rates in effect  
27 before the date the protest or complaint was filed, or the date of the commission  
28 action that initiated the investigation or hearing, whichever is earliest.

29 \* Sec. 8. AS 44.23.020(b) is amended to read:

30 (b) The attorney general shall

31 (1) defend the Constitution of the State of Alaska and the Constitution

1 of the United States of America;

2 (2) bring, prosecute, and defend all necessary and proper actions in the  
3 name of the state for the collection of revenue;

4 (3) represent the state in all civil actions in which the state is a party;

5 (4) prosecute all cases involving violation of state law, and file  
6 informations and prosecute all offenses against the revenue laws and other state laws  
7 where there is no other provision for their prosecution;

8 (5) administer state legal services, including the furnishing of written  
9 legal opinions to the governor, the legislature, and all state officers and departments as  
10 the governor directs; and give legal advice on a law, proposed law, or proposed  
11 legislative measure upon request by the legislature or a member of the legislature;

12 (6) draft legal instruments for the state;

13 (7) make available a report to the legislature, through the governor, at  
14 each regular legislative session

15 (A) of the work and expenditures of the office; and

16 (B) on needed legislation or amendments to existing law;

17 (8) perform all other duties required by law or which usually pertain to  
18 the office of attorney general in a state; [AND]

19 (9) prepare, publish, and revise as it becomes useful or necessary to do  
20 so an information pamphlet on landlord and tenant rights and the means of making  
21 complaints to appropriate public agencies concerning landlord and tenant rights; the  
22 contents of the pamphlet and any revision shall be approved by the Department of  
23 Law, division of consumer protection, before publication; and

24 (10) consult with affected agencies regarding pipeline tariff  
25 matters, and participate in a pipeline tariff proceeding on behalf of the state  
26 when, in the attorney general's discretion, it is in the interests of the state or the  
27 public interest to do so.

28 \* Sec. 9. The uncodified law of the State of Alaska is amended by adding a new section to  
29 read:

30 APPLICABILITY. (a) Sections 1 - 5 and 7 - 8 of this Act apply to matters pending  
31 before the Regulatory Commission of Alaska on or after the effective date of this Act.

1 (b) Section 6 of this Act applies only to matters filed before the Regulatory  
2 Commission of Alaska on or after the effective date of this Act.

3 (c) The changes made by this Act do not apply to

4 (1) an order of the Regulatory Commission of Alaska that is on appeal to the  
5 court on the effective date of this Act;

6 (2) a matter that is

7 (i) included in an order of the Regulatory Commission of Alaska that is  
8 on appeal to the court on the effective date of this Act; and

9 (ii) remanded to the Regulatory Commission of Alaska by the court.

10 \* Sec. 10. This Act takes effect immediately under AS 01.10.070(c).

AMENDMENT # 1

OFFERED IN (H) L&C  
TO: CSHB 277 (RES)

BY REPRESENTATIVE CRAWFORD

1 Page 1, Line 10-Page 3, Line 2; delete all language.

2

3 Renumber sections accordingly.

4

5 Page 3, Line 8-9; replace deleted language “, and the performance of obligations under  
6 and compliance with the terms of leases issued by the state”

7

8 Renumber APPLICABILITY section accordingly

9

10

11 **Justification:** This portion of the bill specifically removes lease compliance decisions  
12 from the jurisdiction of the Regulatory Commission of Alaska and gives it to the  
13 commissioner of DNR. Supporters of the bill have stated that they are not looking to  
14 limit the power of the RCA, but rather to clarify the jurisdiction for these issues. That  
15 being the case, it would not matter whether lease compliance was investigated by the  
16 RCA or DNR. This amendment would return that power to the RCA.

AMENDMENT # 2

OFFERED IN (H) L&C  
TO: CSHB 277 (RES)

BY REPRESENTATIVE GUTTENBERG

*If amendment # 1 fails*

- 1 Page 1, Line 10-Page 3, Line 2; delete all language.
- 2
- 3 Page 3, Line 30; delete the word "or"
- 4
- 5 Page 3, Line 30; replace deleted language "or abandonment"
- 6
- 7 Page 4, Lines 8-13; delete all language
- 8
- 9 Page 5, Lines 3-13; delete all language
- 10
- 11 Renumber sections accordingly
- 12
- 13 Renumber APPLICABILITY section accordingly
- 14
- 15
- 16 **Justification:** This portion of the bill specifically removes from the scope of the RCA
- 17 the ability to oversee dismantlement, removal, and restoration. RCA is a prudent
- 18 commission to oversee DR&R since it considers all parties equally in its mission to reach
- 19 "fair and reasonable". To remove RCA from this oversight position eliminates the
- 20 standing of effected parties.

A M E N D M E N T # 3

OFFERED IN (H) L&C  
TO: CSHB 277 (RES)

BY REPRESENTATIVE CRAWFORD

1 Page 4, Line 14-Page 5, Line 2; delete all language

2

3 Renumber APPLICABILITY section accordingly

4

5

6 **Justification:** This portion of the bill leaves an obvious gap in regulation. The way that  
7 the statute was originally written ensured that there were no gaps in oversight by stating  
8 that if a portion of pipeline business was not "exclusively subject to federal jurisdiction"  
9 that the Regulatory Commission of Alaska would have oversight. By changing this  
10 section of the Pipeline Act, we are purposefully establishing breaks in regulation and  
11 oversight.

AMENDMENT #4

OFFERED IN (H) L&C  
TO: CSHB 277 (RES)

BY REPRESENTATIVE GUTTENBERG

1 Page 6, Line 16; after the word "the" insert "party or"

2

3 Page 6, Line 16; after the word "parties" insert "bringing the complaint before the  
4 commission"

5

6

7 **Justification:** Inserting this language will ensure that parties who are not signees for a  
8 tariff agreement will still be able to bring a complaint before the RCA. Without this  
9 language, a company who was not privy to the original agreement would still be bound  
10 by the agreement made by the original shippers and the carriers.

A M E N D M E N T # 5

OFFERED IN (H) L&C  
TO: CSHB 277 (RES)

BY REPRESENTATIVE CRAWFORD

1 Page 7, Line 27; after "so." insert "Nothing in this subsection relinquishes any powers  
2 of the Regulatory Commission of Alaska, as established under the Pipeline Act.

3

4

5 **Justification:** This amendment would insure that the Attorney General will not usurp  
6 any of the regulatory powers of the RCA while representing the state regarding tariff  
7 matters and proceedings.

A M E N D M E N T # 6

OFFERED IN (H) L&C  
TO: CSHB 277 (RES)

BY REPRESENTATIVE GUTTENBERG

1 Page 7, Line 28-Page 8, Line 9; delete all language

2

3 Renumber remaining section accordingly

4

5

6 **Justification:** This section applies the language contained in the bill retroactively to  
7 matters currently pending before the RCA. It is irresponsible to undercut those parties  
8 with pending matters by changing the scope of their case before a decision has been  
9 made. This could potentially cost businesses tens of thousands of dollars in lost research  
10 and preparation for RCA cases.

AMENDMENT #7

OFFERED IN (H) L & C Committee  
TO: CSHB 277 (RES)

BY REPRESENTATIVE CRAWFORD

1 Page 5, Line 15; delete, "affect rates in effect" and insert "require repayment for an  
2 overcharge on rates that occurred"

3

4

5 **Justification:** The concern with the current language is that this may deny the RCA the  
6 ability to change rates at all, if the rate has already been set. The purpose of this language  
7 is to allow affected parties to bring tariff complaints to the RCA.

## AMENDMENT

OFFERED IN THE (H) L&C Committee  
TO: CSHB 277 (RES)

BY REPRESENTATIVE CRAWFORD

1 Page 4, Line 8-13; delete all language and replace with:

2

3 **\*Sec. 3.** AS 42.06.230 is amended by adding a new subsection to read:

4           c) Notwithstanding any other provision of this chapter and to the extent  
5 not preempted by federal law, the commission has jurisdiction over all amounts collected  
6 and earned by a pipeline carrier for performing dismantlement, removal, and restoration.  
7 In the exercise of its jurisdiction, the commission shall provide the amounts collected and  
8 earned are available and sufficient to satisfy the legal obligations of the pipeline carrier to  
9 perform dismantlement, removal, and restoration and shall provide that any excessive  
10 collections and earnings are available for refund. In determining the legal obligations of  
11 the pipeline carrier to perform dismantlement, removal, restoration, the commission shall  
12 look to the in rights-of-way agreements and leases between the pipeline carrier and the  
13 affected land owners and to the environmental regulations of the appropriate federal and  
14 state agencies.

**AMENDMENT TO SEC. 4 OF CS FOR HOUSE BILL NO. 277 (RES) 5/13/03 (Corrected)**

Page 4, line 14 to page 5, line 2: delete all language.

Renumber sections accordingly.

**Justification.** This amendment is also consistent with Chairman Harbour's comments. This amendment would delete Sec. 4 entirely. The State, through the RCA, should have the regulatory authority to regulate to the degree not preempted by federal law. The Legislature should not take the risk that the regulatory authority of the State, through the RCA, falls short of the task of ensuring that Alaska's pipeline infrastructure is adequate for both the intrastate and interstate transportation of oil. The existing AS 42.06.245 makes clear that the State has the jurisdiction. The language in Sec. 4 is confusing, will result in a great deal of litigation, and makes it less clear that the State has the necessary jurisdiction.

# ALASKA STATE LEGISLATURE

*Vice Chair:*  
Joint Armed Services Committee

*Member:*  
Military and Veterans Affairs Committee  
Labor and Commerce Committee  
State Affairs Committee  
Economic Development, Trade, &  
Tourism Committee



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## REPRESENTATIVE NANCY DAHLSTROM

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### Sponsor Statement

#### CSHB 277 (RES)

"An Act relating to the powers of the Regulatory Commission of Alaska in regard to intrastate pipeline transportation services and pipeline facilities, to the rate of interest for funds to be paid by pipeline shippers or carriers at the end of a suspension of tariff filing, and to the prospective application of increased standards on regulated pipeline utilities; allowing the commission to accept rates set in conformity with a settlement agreement between the state and one or more pipeline carriers and to enforce the terms of a settlement agreement in regard to intrastate rates; and providing for an effective date."

HB 277 will clarify what jurisdiction the RCA has over state rates as they pertain to interstate and intrastate tariffs; it addresses the RCA's jurisdiction over State Right-Of-Way leases and will clarify their authority over dismantlement, removal, and restoration; it changes the applicable interest rate charged under RCA orders so that it conforms with the interest rate applied in other similar matters.

HB 277 will provide an environment that encourages both new and existing companies to continue investment and have certainty over future pipeline tariffs, the bill creates a business environment that supports a fair return of any pipeline owners investment, and provide the confidence that agreement with the state will be honored by all parties, while safeguarding the best interests of Alaskans.

SECTIONAL ANALYSIS  
CS FOR HOUSE BILL NO. 277(RES)

Section 1. This section would make the commissioner of DNR the lead agency to investigate the performance of obligations under and compliance with state leases issues by DNR, including dismantlement, removal, and restoration (DR&R) obligations under state right of way leases. This does not represent any change in existing practice; DNR issues and enforces the leases now. But the section would clarify statutes in this regard.

Section 2. Section 2 would specify that the commission regulates pipelines and pipeline carriers in the state to the extent applicable to intrastate transportation. We believe this language is consistent with current statutory intent, and is an improvement over the bill's original language. Additionally, this section would remove from the commission's jurisdiction any oversight of the performance of a pipeline carrier's obligations under state leases. This function has traditionally been exercised by DNR, who issues the lease. The lease is a contract between the state and the carriers for the use of state land and the state would prefer not to have the commission interpreting or enforcing its contracts. The leases do not contain the regulation of the pipelines. The commission retains that jurisdiction under its authority to issue certificates of public convenience and necessity and its other statutes and regulations.

Section 3. Section 3 would provides expressly that the commission would not have jurisdiction over DR&R, over amounts collected from *interstate* shippers for DR&R, but would have jurisdiction over amounts collected from intrastate shippers for DR&R.

Section 4. This section would again clarify that the commission has jurisdiction over rates and charges where the pipeline is engaged in intrastate commerce, including the intrastate portion of a pipeline that is also subject to federal jurisdiction. The section would prohibit the commission from considering interstate revenues (amounts collected from interstate shippers) when evaluating intrastate rates. Similarly, the FERC does not consider intrastate revenues when it determines what can be charged for interstate rates. But the section also makes clear that the commission can consider the total costs of operating the pipeline - both interstate and intrastate - as is needed in order to determine how much of that amount can properly be included in the intrastate rates.

Section 5. Section 5 would delete the requirement that a carrier obtain commission approval for discontinuing use of all or part of a pipeline, so long as the carrier is not permanently reducing capacity or discontinuing service. If transportation services or being discontinuing or capacity is being permanently reduced, the carrier must seek commission approval. The change will allow a carrier to make necessary changes to infrastructure for safety, efficiency or other reasons, without having to go to the commission, so long as transportation services are not affected.

Section 6. Section 6 would replace the existing interest rate of 10.5% for amounts to refunded with a new interest rate, which floats with the 12th Federal Reserve District discount rate in effect in each year for which refunds are due. The rate would be 4 percent above the discount rate, or 8%, whichever is higher.

Section 7. Section 7 would provide clear statutory language for what rates are affected by a commission order. The section would provide that an order would not affect rates that had been charged before the protest, complaint, or other action that initiated the proceeding. This change would alert a carrier that its rates are being challenged and may be subject to refund, but would not contravene the filed rate doctrine by allowing an order to reach back affect earlier rates that had not been protested.

Section 8. This section would codify existing practice with regard to the attorney general's role over tariff matters. It would provide that among the duties of the attorney general is the duty to consult with affected agencies regarding pipeline tariff matters, and to participate in tariff proceedings on behalf of the state. Current RCA statutes make clear that the attorney general represents the state in tariff matters before the FERC, but it is not stated expressly with regard to proceedings before the RCA. This section would clarify this role, similar to the clarity providing in section 1 with regard to the DNR commissioner's authority over state leases and DR&R, and in other sections dealing with the RCA's authority over regulating pipelines and pipeline carriers.

Section 9. This section would make the Act applicable to matters pending before the commission on or after the effective date of the Act. The Act would not apply to the commission's order 151, which is pending before the superior court.

Section 10. This section provides for an immediate effective date.

# FISCAL NOTE

STATE OF ALASKA  
2003 LEGISLATIVE SESSION

Fiscal Note Number: 1  
Bill Version: CSHB 277(O&G)  
(H) Publish Date: 5/6/03

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Revenue  
Title: Pipeline Utilities Regulation BRU: Revenue Operation  
Component: Tax Division  
Sponsor: Rep. Dahlstrom  
Requester: House Resources Committee Component No.: 2476

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2003) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

This bill deals with the scope of actions that can be taken by the Regulatory Commission of Alaska with respect to intrastate oil and gas pipelines.

Prepared by: Dan Dickinson, Director  
Division: Tax Division  
Approved by: Steve Porter, Deputy Commissioner  
Agency: Department of Revenue

Phone 269-1033  
Date/Time 5/6/03 11:20 AM  
Date 5/6/2003

# FISCAL NOTE

STATE OF ALASKA  
2003 LEGISLATIVE SESSION

Fiscal Note Number: 2  
Bill Version: CSHB 277(O&G)  
(H) Publish Date: 5/6/2003

Revision Date/Time (Note if correction): 5-6-03 Dept. Affected: Natural Resources  
Title: Pipeline Utilitites Regulation BRU: Resource Development  
Component: Oil and Gas Development  
Sponsor: Dahlstrom  
Requester: House Resources Component No. 439

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2003) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

Under the current version of this bill, there will be an indeterminate fiscal impact to the state. However, proposed amendments offered by the Administration should alleviate these fiscal impacts.

Prepared by: Mark D. Myers  
Division: Oil and Gas  
Approved by: Tom Irwin, Commissioner  
Agency: Natural Resources

Phone 269-8800  
Date/Time 5/6/2003  
Date 5/6/2003

*Alaska*

Frank H. Murkowski, Governor

**Department of Community  
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April 25, 2003

Honorable Nancy Dahlstrom  
Alaska State House of Representatives  
State Capital  
Juneau, Alaska

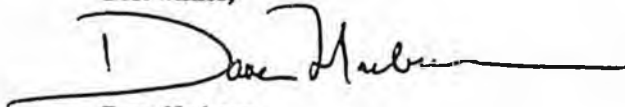
Dear Representative Dahlstrom:

Yesterday, I joined others at the Anchorage LIO for a hearing on House Bill 277. You and the Chairman agreed to take the bill up next week, giving Members a few more days to consider amendments to the original.

Since the bill would have such far-reaching impact on the Alaska Pipeline Act and on its administration, I thought you might wish to have the Commission's analysis now, while final wording is being considered.

Having received so many queries from other legislative offices on the impact of this legislation, I am taking the liberty of copying Members with the same information.

Best wishes,



Dave Harbour  
Chairman

cc: Members, Alaska State Legislature

Response to House Bill 277: April 24, 2003

Good afternoon Mr. Chairman and Members. I am Dave Harbour, Chairman of the Regulatory Commission of Alaska. I appreciate the opportunity to testify.

My duty and goal today is to describe for you how the bill will change current law and affect the public interest.

House Bill 277 amends the Pipeline Act; undoing several recent RCA decisions on TAPS tariff rates and dismantlement issues, and preventing any future commission from resolving similar disputes. In November 2002 the RCA issued an order finding that the rates charged for intrastate shipments on the Trans Alaska pipeline from 1997 to 2000 were an average of 57% more than the reasonable costs that the carriers incurred to transport the oil. The Carriers were ordered to pay refunds, and to make additional filings so that cost based rates could be set prospectively. The estimated refunds owing to shippers who used TAPS between 1996 and 2000 are more than \$80 million, plus interest. The Carriers have appealed that ruling. This draft legislation greatly limits the RCA's jurisdiction over the Trans Alaska Pipeline and all other pipelines in the state, both in the past and in the future. It undoes parts of the RCA's decision that was based on an extensive record that the parties have spent more than \$18 million creating. The November order, which is available on our commission's website ([http://www.state.ak.us/rca/orders/2002/P97004\\_151.pdf](http://www.state.ak.us/rca/orders/2002/P97004_151.pdf)), exhaustively details the review of the evidence filed by the parties and the reasons for the decision that the industry sponsor(s) of this bill seek to reverse. You should be aware that HB 277 makes significant changes to the RCA's role in regulating all pipelines in response to one or two special interest parties attempting to reverse an RCA Order only affecting TAPS.

My ability to comment specifically about the provisions of this bill is limited by the fact that it addresses issues that are still pending before the RCA for decision. Major advocates of this bill are aware of that because they are party to those cases. I cannot comment in detail on the merits of their proposals without impairing my ability and commitment to sit as an impartial decision-maker on those important cases. I can discuss the broader policy implications of what this bill proposes.

Passage of this bill would allow the pipeline owners (who are also the major producers on the North Slope) to set intrastate rates with no input from shippers other than the state. To the extent the Legislature seeks to improve Alaska's investment climate, it could make the climate for future development by small-scale producers less secure; thus possibly reducing the state's future revenue stream. The bill would allow the pipeline owners to set rates without oversight from the RCA, and could have a significant impact on the state's ability to recover royalty revenues from future producers of its resources.

What is being represented in this bill as a simplification of the pipeline rate setting process is likely to be more complex and litigious in its implementation than the current system. What is being presented as increasing investment clarity for producers and affiliated carriers could be later seen as decreased investment clarity for other players: explorationists, current and future shippers.

Allowing rates to be set by affiliated producers/carriers without input from the shippers who will be expected to pay them would violate their due process rights. Therefore, if passed in this form, the bill invites litigation in the Courts rather than regulatory treatment. The bill puts the state, presumably through the Department of Natural Resources that has statutory responsibility for managing the state's resource interests, in the position of protecting the public interest on pipeline tariffs. However, the state's economic interests in production and shipment of its oil may not always be consistent with all other current and future shippers. Being saddled with the responsibility to protect the interests of all shippers naturally conflicts with the state's ability to act to further its own economic interests, or may preclude other intrastate shippers seeking reasonable pipeline rates, from being represented.

The section of the bill that addresses the interest owing on refunds is properly within the Legislature's province to decide prospectively. Section 6 seeks to clarify the interest rate on refunds. However, Section 10 of the current version of this bill makes the interest rate changes effective retroactively, a change that could raise constitutional challenges from parties to the current TAPS litigation. As the Legislature considers changing the historical interest rate on refunds, it should evaluate its authority to do so retroactively, and what litigation an attempt to do so might spawn. The refunds owing

under the TAPS order are estimated to exceed \$80 million. These funds were collected from shippers between 1996 and 2000; therefore, accrued interest is significant.

This bill would limit the Commission's jurisdiction, which is clearly defined in AS 42.06 and conforms to that of other state regulatory agencies. The Legislature intended that the Alaska Pipeline Act allow an objective, non-political commission to have broad regulatory responsibility. AS 42.06.245 states "nothing limits the powers of the commission set out in this chapter except to the extent they are preempted by Federal law." When considering the passage of AS 42.06.245, my dear friend, Senator Cliff Groh, who was the chairman of the legislative Committee that proposed the Pipeline Act, said, "The State attempted to regulate to the maximum extent possible, but would have neither the power nor the ability if preempted by federal law."<sup>1</sup> When considering the scope of the RCA's jurisdiction, the Legislature might be wise to explore to what extent Federal law preempts the Commission's jurisdiction. If the Legislature wants to further shape or limit our jurisdiction, it would be essential to identify and look at the areas in which Federal law does not govern and consciously decide where jurisdiction should lie and where the Legislature consciously wishes to create a regulatory void.

This bill will also affect how the Commission regulates gas pipelines. We had previously responded to legislators' concerns that we could protect the public interest even when Contract Carriage language is included in the Alaska Pipeline Act. We must now inform the Legislature that we would be unable to act, under HB277, where pipeline owners reach a separate agreement with the State of Alaska. In recent hearings on HB204/SB151 we affirmed we could still regulate intrastate gas pipelines in the public interest where pipeline owners are allowed to employ contract carriage in their tariffs. With the proposed statutory language in HB 277, when the State reaches a settlement with a pipeline owner on its rates, the rates are considered to be just and reasonable. This effectively removes our ability to act on any protests from shippers who are not part of the settlement. Such settlements are likely to be similar to contract carriage agreements that were discussed during the HB204/SB151 hearings. We believe you will agree that the effect of this legislation is to move rate making from RCA public proceedings, into private negotiations between the State DNR/DOL and the Pipeline Owner, excluding other shippers.

We counsel the Legislature that while HB 277 addresses the interests of at least one TAPS owner at the expense of non-owners and future parties, it may also undermine the Legislature's intent to insure that future pipeline tariff rates are fair and reasonable. Attached is a section-by-section analysis of HB 277, which we hope you will find useful.

Thank you for this opportunity.

## Section-by-Section: HB 277

### Section 1

The proposed change to AS 42.06.140(a)(1) limits the RCA's authority over pipeline carriers that carry interstate and intrastate shipments. This limitation represents a major policy shift in the State's regulation of pipelines. Such a policy shift should only be considered after a comprehensive analysis of all the provisions of AS 42.06 as well as the provisions of AS 38.35, the Right-of-Way Leasing Act, which was passed as a companion act to the Pipeline Act in 1972.

Under AS 42.06.140(a)(2) the RCA now has jurisdiction concurrently with DNR concerning compliance with state pipeline right-of-way leases. The proposed change to that section would leave that authority solely with DNR.

The proposed changes would delete the word "facilities" from AS 42.06.140(a)(2) and (3), removing the RCA's authority to investigate pipeline facilities and order changes to facilities. The proposed change to AS 42.06.140(a)(8) would remove the RCA's authority to require a pipeline carrier to obtain a certificate to abandon a pipeline facility.

The RCA's authority over pipelines is in some ways more comprehensive than its authority over utilities. For example, no person can begin construction of a jurisdictional pipeline without a certificate from the RCA. Utilities do not require permission to construct facilities, only to operate them. The Legislature has given the RCA authority to act in the public interest to oversee pipeline facilities. As a practical matter, the RCA and APUC have not used that authority to affect pipeline location and routing because the pipelines that have been built in Alaska cross state land and DNR has taken the lead in such matters.

~~The proposed language in this section creates confusion because there are other provisions of AS 42.06 not subject to proposed amendments, which give the RCA explicit authority over facilities. AS 42.06.340 gives the RCA authority to require safe and adequate facilities and to order enlargement of pipeline facilities. AS 42.06.340 gives the RCA authority to order interconnection of pipeline facilities and physical changes to pipeline facilities.~~

### Section 2

The proposed new subsection would remove RCA authority to oversee dismantling, removal and restoration (DR&R) of a pipeline and to oversee money collected for DR&R. ~~Removal of RCA authority over DR&R would mean that there would be no regulatory authority over portions of a pipeline that do not cross state land. Portions of a pipeline that do cross state land would of course be subject to DNR's authority under the state pipeline right-of-way lease. In the case of pipelines that cross both state and federal lands, coordination and consistency to insure that the pipeline is adequately cleaned up before it is abandoned, could be lost.~~ *Additional language*

### Section 3

The proposed changes in this section clarify RCA jurisdiction over carriers that are subject to federal regulation. ~~The amended language reflects current RCA practice except the proposed last sentence of AS 42.06.245. That sentence would prohibit the RCA from considering interstate revenues in setting intrastate rates. In order to insure that adequate funds are available to complete DR & R on state lands, the Commission needs to know how much has been collected through interstate rates. A flat prohibition on consideration of those revenues may result in higher intrastate rates. For example, on TAPS, intrastate shipments have historically been less than five percent of the volumes, but more than 50% of TAPS crosses state lands. Without the ability to consider interstate revenues, the intrastate rates may need to be increased to cover more of the DR & R responsibility. The last sentence of the current section, which HB 277 proposes to delete, is in the current statute to give the RCA the authority necessary to protect the interests of the state and intrastate shippers.~~

#### Section 4

The RCA has comprehensive authority over the construction of a pipeline. *Is this a DNR issue?* Removing the RCA's authority over abandonment of physical pipeline facilities would mean that the RCA would not have similar authority over the deconstruction phase of a pipeline. That change represents a major policy shift. While DNR would have authority over the deconstruction of portions of a pipeline on state land, there would be a regulatory void concerning Alaska portions of pipelines not on state land.

#### Section 5

The proposed new subsection would remove all RCA authority over intrastate rates for the entire term of any settlement reached by the State and a pipeline carrier. The State, which has not often chosen to include shippers in the process, whether interstate or intrastate, has negotiated past pipeline settlements. The pipeline settlements reached by the State in the past have been for very long terms, typically the expected life of the pipeline. If this subsection is enacted in its current form, intrastate shippers would be deprived of any input into the setting of intrastate rates they will pay for many years into the future. Interstate shippers will still be able to give their input to the FERC before the FERC makes a decision on the settlement.

#### Section 6

The proposed language in this section would change the rate of interest to be paid on refunds. This is an appropriate matter for legislative decision provided the new language applies to future periods. Applying it to past periods could raise constitutional questions.

#### Section 7

This proposed change is ambiguous. The RCA and APUC have consistently interpreted the present language of AS 42.06 to provide for two types of rate proceedings, one initiated by the pipeline carrier as a tariff filing and the other initiated either by the RCA or by complaint of a third party.

In a proceeding initiated by tariff filing, the tariff rate is suspended (does not become a permanent rate). Following the adjudicatory proceeding, the rate adopted by the RCA is put into effect as of the date the pipeline carrier proposed for its tariff filing. That is a historic date, sometimes several years in the past, depending on the length of the proceeding. However, putting such a rate into effect as of that date is not retroactive because there has not been a permanent rate during the suspension period.

In a Commission-initiated or complaint proceeding there is a permanent rate already in effect for the pipeline carrier, a rate that the pipeline carrier has not proposed to change. That permanent rate remains in effect until the RCA determines that it is not just and reasonable and sets a new rate. The new rate does not go into effect until at least the date of the RCA order setting the new rate.

If this proposed change to AS 42.06.410(a) is intended to apply to a proceeding initiated by tariff filing, the language is in conflict with the refund language in AS 42.06.400. If the proposed change is intended to apply to a Commission-initiated or complaint proceeding, the additional language is unnecessary.

<sup>1</sup> Minutes of Senate Finance Committee, 8<sup>th</sup> Leg., 1<sup>st</sup> Sess. (Nov. 1, 1973 meeting).

## TESTIMONY REGARDING WHY CHANGES TO THE PIPELINE ACT ARE NEEDED

Mr. Chairman, members of the Committee, thank you for this opportunity for ConocoPhillips to speak on this important issue. My name is Randal Buckendorf. I am an attorney in Anchorage for ConocoPhillips. I handle our environmental legal work and our pipelines legal work.

As Ms. Yaeger has already explained, the changes we have advocated for are important for future certainty. You will hear testimony that this bill overturns recent RCA decisions. You will also hear a lot of testimony about the 1985 TAPS Settlement Agreement, how we are trying to advocate for the legislature through this bill to approve it, and also overturn a recent RCA ruling. This is all patently false and designed to raise red flags of dissension and controversy.

Instead, as Ms. Yaeger as pointed out the bill is about regulatory clarity and certainty, and creating an atmosphere for the future where explorers like ConocoPhillips want to continue investing, exploring for new fields, and building pipelines. To that end, we have worked diligently in the last week at the request of the sponsor to work with other companies toward some compromise language. We remain willing to work with you and other interested parties on modifying the original bill.

With that in mind, I would like to walk you through the bill, what those suggested changes are designed to do and then we will make ourselves available for any questions you may have. However, I may not be able to speak to questions if they relate to the recent RCA ruling or other topics which are the subject of ongoing litigation. But, as I have already advised, this bill is not in any event overturning that ruling.

First, clarity of jurisdiction. Jurisdiction on pipelines in Alaska is shared. The Federal Energy Regulatory Commission (FERC) has jurisdiction over all of the oil produced in the state that ends up being placed on a tanker in Valdez and shipped to the West Coast.... this is slightly more than 90 percent of the oil transported on TAPS. The RCA on the other hand has jurisdiction over that oil that stays "in-state". It is this basic difference that creates the terminology "intrastate" (RCA regulated) and "interstate" (FERC regulated). The changes recommended in Sections 1 and 3 provide absolute clarity surrounding this intrastate jurisdiction and correct the jurisdictional creep that is evident in several recent orders.

Another area of jurisdictional overlap and discontinuity is between the RCA and the Department of Natural Resources, and potentially the RCA and the Federal Bureau of Land Management – for federal leases. The changes recommended in Sections 1 and 2 make it clear that it is the same agencies that granted our rights-of-way (and not the RCA) that oversee these leases and the requirements within those leases for dismantlement, removal, and restoration.

In contradiction to Chairman Harbour's statement in his letter from last week, the bill would not remove RCA authority to oversee money collected on intrastate rates for DR&R. What it does is clarify what jurisdiction the RCA properly has with respect to pipeline ROW leases. Pipeline ROW leases are contractual arrangements between each pipeline owner and either the Department of Natural Resources, the Bureau of Land Management, or in some instances a private party. Any implication that the RCA can attempt to insert itself into these leases almost like a signatory party when clearly they are not a party, is unacceptable both from a contractual, and regulatory point of view. Jurisdiction is the fundamental principle surrounding all regulatory agencies and it needs to be clear. HB 277 provides that clarity in Sections 1, 2 and 3.

Second, equal treatment and Section 6. Sometimes we are going to end up in litigation. A pipeline act refund order is a "judgment" issued by an administrative agency as part of an administrative proceeding and it is treated as a judgment by the Alaska Supreme Courts rules of Appellate Procedure. The same interest rate that applies to judgments under the Pipeline Act has always been the same interest rate that applied to other judgments. That was the legislative intent in 1978 when it wrote this section of the act and we believe that the 1997 tort reform amendments also changed the applicable interest rate on Pipeline Act judgments. However, it is being argued that was not the case. The amendment in Section 6 makes it clear that the legislature did not intend to single out pipeline companies from every other business entity. As Chair Harbour pointed out, this is a decision the legislature can and should make. We believe that at a minimum it needs to be changed point forward. If however, the legislature agrees with us that the change was intended to be made in 1997 then the legislature can also decide that this clarification can be made retroactively back to the effective date of the 1997 amendments. Section 9 would do that.

Third, retroactive ratemaking and Section 7. It is a common principle of regulated utilities that an agency like the commission cannot bypass the rule against retroactive ratemaking. That rule is a fundamental aspect of regulated utility law and it is simply stated that an agency cannot retroactively apply a requirement for periods prior in time to when a complaint, protest, or commission action initiated the investigation or hearing that led up to that requirement. Section 7 was intended to make

this clear. However, just as Chair Harbour pointed out in his testimony and sectional analysis, our suggested change to this section was broadened into something that was not intended. Essentially we suggested a change to this section that would make it clear that an order setting rates under this section shall not affect rates in effect before the date of the protest, complaint, or commission action that initiated the investigation or hearing. We look forward to working with you and the other parties, including the administration and the commission, to modify this section.

Finally, business certainty. As we have already explained, we are neither asking you to overturn the recent RCA decision on TAPS rates nor to legislatively validate the TAPS settlement agreement itself. I am confident though that the testimony that will soon follow would have you believe Section 5 would do just that. That is incorrect. Section 5 does not look at current agreements. It looks only to the future. The TAPS settlement agreement will expire in a few years. That agreement requires us to begin negotiation of a new agreement with the administration. Section 5 creates certainty for doing that.

When the State of Alaska through the Office of the Attorney General acts, it acts in the best interests of the state and the best interests of the public. The Alaska Supreme Court recognizes this principle, the Governor recently recognized it in Executive Order No. 111 and the concurrent amendment to AS 44.23.020, and so should the legislature.

Notwithstanding these valid reasons for section 5, we have no objection to removing it. We do hope that we will be able to work with you and the other parties to somehow recognize this principle, either now or in the future.

Thank you again for your time. We are pleased to try and answer any questions you may have about the bill itself. Again, because we are in litigation we may not be able to address certain questions you may have.

**HB 277**  
**Testimony by Al Bolea**  
**Before the House Oil & Gas Committee**  
**May 1, 2003**

Thank you Mr. Chairman, for the opportunity to testify today on this important bill. For the record, my name is Al Bolea, and I am President of BP Pipelines and Performance Unit Leader for BP's mid-stream assets in Alaska, which include our interests in the Trans Alaska Pipeline System and the ships that carry Alaskan crude to West Coast markets.

I would also like to thank you and the other committee members for making the time to discuss this bill with me over the past week or so.

As you know, BP strongly supports HB 277, and encourages this committee to facilitate its movement through the legislative process.

We support this bill because it helps to correct many serious flaws that currently exist in the Alaska Pipeline Act. These flaws create uncertainty for current and potential future investments, and must be rectified to help ensure a healthy oil and gas business in Alaska.

In fact, these flaws are so significant they need to be addressed to ensure investment in risky projects like the Alaska Natural Gas Pipeline.

While I will not cover all of the deficiencies nor all of the recommended changes to the APA, I would like to touch on several key points.

The current language in the APA creates uncertainty over jurisdictional issues, creating unnecessary overlap between regulatory agencies. This has allowed

HB277 will have no effect on the existing agreement with the State, known as the TSM agreement. Tesoro and Williams are free to continue their challenge to TSM in the courts. Yet, you may have heard a lot about the assertedly exorbitant profits of the TAPS carriers under TSM. In order to put the record straight I feel compelled to explain a bit about the financial mechanics of TSM. But I'm not asking you to pass judgment today on TSM ... rather, we will defend TSM in the courts. For this purpose I would ask that you turn to Figures 1 and 2, attached to the end of my testimony.

It's important to note that actual rates charged by the carriers have been well below the originally projected TSM rates. Thus we find ourselves where TSM has performed better than expected from the shippers' perspective in every year since the contract was signed, but Tesoro and Williams are seeking to maximize their profits by "cherry picking" the original TSM deal. In fact, in its appeal of the RCA Order 151 the State's Attorney General stated, "the RCA ignored its own precedent, abused its discretion, and erred in fact and law." Moreover, when TSM was approved by the Department of Justice, they warned, and I paraphrase, *TSM was negotiated as a package... No single element of TSM should be evaluated independently... To do so would likely nullify the agreement.*

It is hard to believe how opinions can do an about-face based on self-interest. Remember, at the time TSM was agreed to, Tesoro's counsel said, The settlement "will provide certainty to the operating costs into the future." MAPCO's counsel Randy Jones said, "MAPCO Petroleum believes the settlement is fair and equitable and that it warrants the Commission's approval...". And the Dept. of Justice termed TSM a "comprehensive cost-

We invest in Alaska because it makes sense for our business, and it has been done in a way that has had mutual benefits for the residents of this State and our shareholders.

In closing my testimony, we believe those mutual benefits can and should continue.

Your support of HB 277 will help the State move forward in a very positive way. It is a bill vital to the future of this State; a bill that is one of the essential ingredients that can support an Alaska Gas pipeline becoming a reality.

Thank you again for allowing me to testify before this committee. I will try my best to answer questions at this time.

Please be aware that because of litigation currently underway on pipeline issues, I have asked our attorney, Jim Decker, to join me at the table to ensure I stay on point.

Thank you, Mr. Chairman.

**UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION**

**TRANS ALASKA PIPELINE SYSTEM**

**Docket No. OR 78-1**

**BP PIPELINES INC.**

**Docket No. IS83-29-000**

**EXPLANATORY STATEMENT OF THE STATE OF ALASKA  
AND THE UNITED STATES DEPARTMENT OF JUSTICE  
IN SUPPORT OF SETTLEMENT OFFER**

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THE  
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DOCUMENT(S)  
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of petroleum.<sup>1/</sup> DOJ has stipulated to the entry of an order by the Commission adopting that Agreement as the complete and final resolution of the protests against the tariffs of the settling carriers.<sup>2/</sup> The Agreement embodies a cost-based methodology -- the "TAPS Settlement Methodology" or "TSM" -- that serves as the basis for calculating the tariffs and the refund obligations of the TAPS owners through 1985, and provides a mechanism for determining the maximum tariffs that the TAPS owners may charge over the stipulated life of the pipeline.

The Settlement Agreement is the product of months of intense negotiation among the parties and represents a fair and reasonable compromise of their respective litigation positions. The parties entered into the negotiations with varying objectives. The agreement that emerged from these negotiations is designed to achieve,

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1/ See Settlement Agreement signed by the State of Alaska and ARCO Pipe Line Company dated February 8, 1985, Settlement Agreement signed by State and BP Pipelines Inc. dated April 24, 1985, and Technical Amendments to the ARCO and BPP Settlement Agreements dated April 29, 1985 (collectively, "Settlement Agreement"), each of which are attached to the Stipulation signed by State, DOJ, ARCO and BP dated April 30, 1985. Hereafter, all references to "Sections" are references to Sections in the ARCO Settlement Agreement.

2/ Because the Agreement between Alaska, ARCO and BP is intended to survive any possible extinction of FERC jurisdiction over TAPS, i.e., to be separately enforceable as a contract, DOJ did not become a direct signatory to the Agreement. However, by virtue of the Stipulation, DOJ regards itself as a party to the Agreement for purposes of settling the TAPS proceeding pending before the Commission, Docket No. OR78-1, and BP Pipelines Inc., Docket No. IS83-29-000, the separate proceeding covering BP's existing TAPS tariff.

It bears emphasis that the overall settlement in general, and the TSM in particular, have been crafted specifically for TAPS and the objectives of the parties. It is neither the intent nor the position of the parties to the settlement that the settlement methodology should be applied to any petroleum pipeline other than TAPS.<sup>4/</sup>

The purpose of this statement is to explain the various elements of the TAPS Settlement Agreement in the context in which they were negotiated -- not as independent terms, but as parts of an integrated whole. Section I summarizes the primary terms of the Settlement Agreement. Section II gives a brief history of TAPS and the proceedings before the Commission. Section III provides a detailed description of the settlement and the methodology it employs. Section IV describes the information provisions of the Agreement. Finally, Section V provides a preliminary overview of some of the reasons why Alaska and DOJ believe that the Settlement Offer is in the public interest and consistent with the Commission's statutory mandate.<sup>5/</sup>

---

4/ See Introduction to the Settlement Agreement.

5/ Alaska and DOJ believe that the current administrative record in the TAPS litigation provides an adequate basis for the Commission to approve the Settlement Offer under its Rules of Practice and Procedure. Nevertheless, if it is deemed necessary, the record will be supplemented.

FIG. 1: NORMAL HOME MORTGAGE

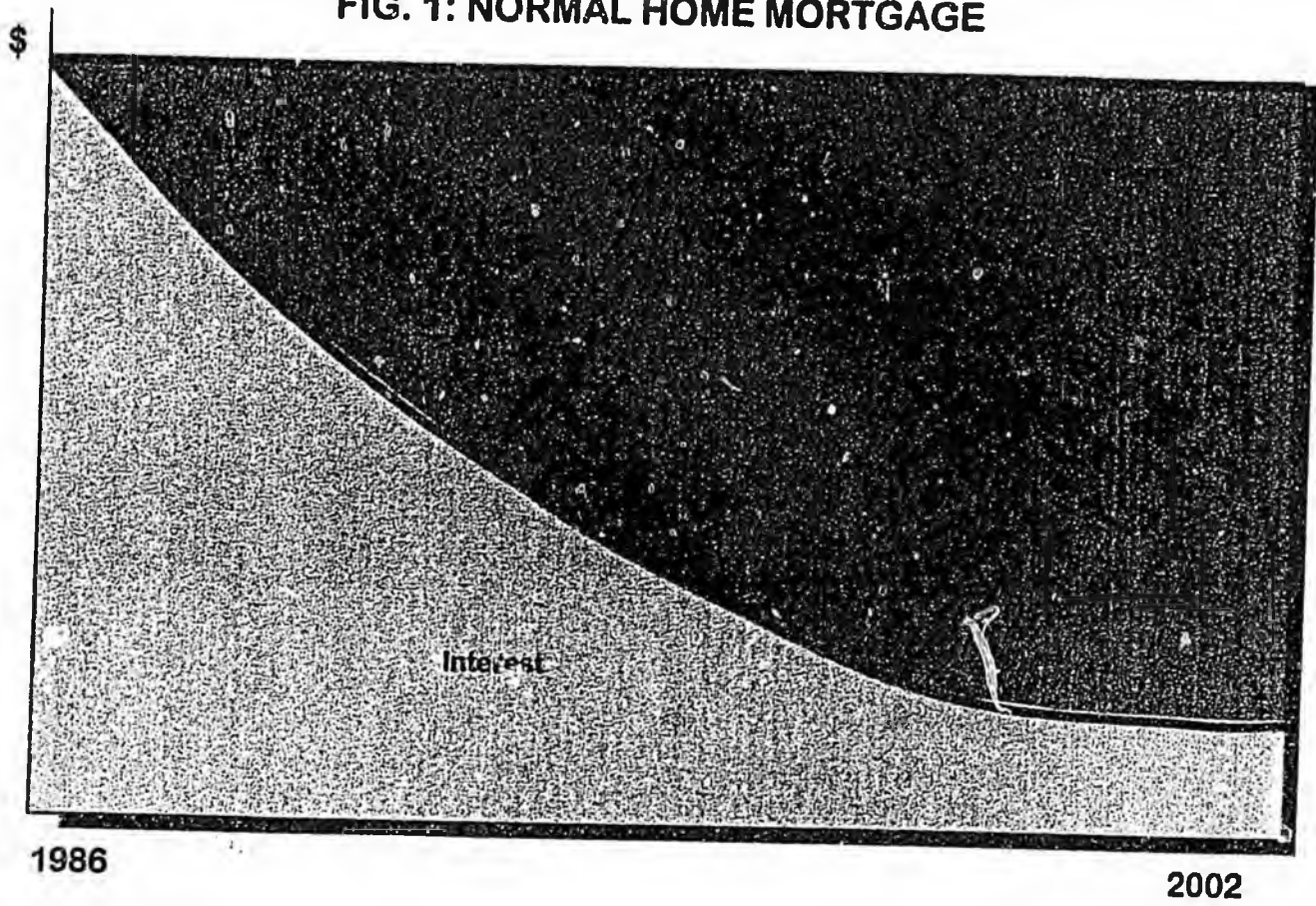
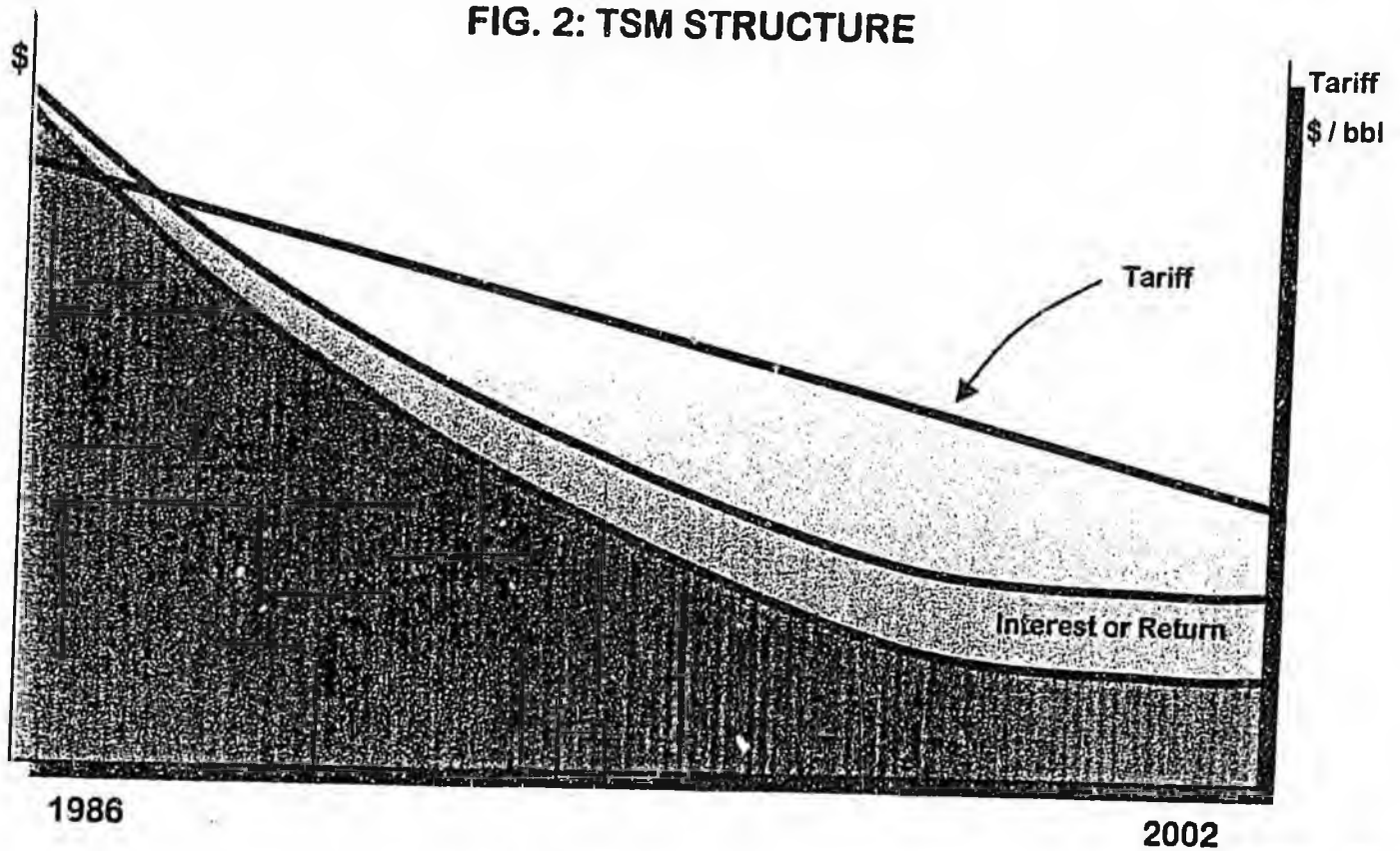


FIG. 2: TSM STRUCTURE



**House Resources Committee**

**On HB 277**

**May 7, 2003**

**8:30 PM**

*[Rep. Fate opens the continuation of House Resources meeting announcing in attendance Rep's Gatto, Morgan, Heinze, Masek, Wolf and Kerttula. Chairman Fate announces his intention to take testimony only tonight from Dave Harbour and Gerry Gallagher and allow questions of those two and then continue the hearing at 8:00 a.m. on Friday. He also announces his intention to finish testimony and questions by the close of Friday's meeting and move the bill.]*

**Dave Harbour**, Chairman, Regulatory Commission of Alaska (on line): Mr. Chairman, with your permission, normally I speak from written notes because it tends to be that the RCA is quoted later and so I'll ask your leave to do two things with your approval: I'll submit formal testimony for the record, number one, and number two, with your permission, I'll speak just personally to the members trying to give the best brief overview understanding that I'm able to of the legislation with the idea that maybe not every one of my words is as precisely accurate as it is well intended.

**Chair:** Go right ahead and continue on.

**Harbour:** Mr. Chairman, I have an announcement to make tonight. In January, a not-very-well publicized act took place and that act was that the RCA executed a memorandum of understanding [MOU] with the Federal Energy Regulatory Commission [FERC] that provides additional clarity with respect to resource development and transportation in Alaska. Briefly from that MOU, "the parties recognize that the conduct of their responsibilities has and will in the future require them to examine, regulate, or otherwise oversee the same facilities or

activities. The parties further recognize the coordination of their efforts can result in increased efficiency and cost savings to both the public and regulated entities. In view of their concurrent regulatory responsibilities for TAPS and other Alaska pipelines, the parties contemplate that joint or concurrent hearings may be advisable. The parties further contemplate that, absent joint or concurrent hearings, the two agencies will coordinate the timing of related decision-making..." etc.

In addition to that more recent evidence of fiscal certainty with regard to the pipelines in Alaska, Mr. Chairman, I might make the point that since 1972 the State of Alaska has had regulatory certainty with respect to pipelines by virtue of the age of the Pipeline Act. Mr. Chairman, tonight I have a feeling that many of the proposed amendments to the Commission's jurisdiction over DR&R appear to be driven by a concern that the RCA would add DR&R obligations to those already agreed to between the Carriers and State, the Dept. of Interior, and private landowners. Although the RCA authority may seem like it's broad under the Pipeline Act, as your predecessors the framers intended, I believe that the Commission only, and I can't emphasize these two points more importantly than any other tonight, I believe that the Commission asserts two areas of jurisdiction: (1), to ensure that sufficient money is collected and available to complete the DR&R obligations already agreed to by the Carriers with the State, the Dept. of Interior, and private landowners, and (2) to ensure that the DR&R is in fact completed according to those agreements before permission is granted by the RCA to abandon a pipeline.

Mr. Chairman, our Commission now handles dismantlement, removal and restoration, the DR&R issues, at several times during the life of a pipeline. In setting initial rates DR&R is a cost that must be recovered in rates. The Commission sets rates to ensure that adequate DR&R is collected through tariffed

rates, and that the costs are spread fairly amongst shippers throughout the life of the pipeline. I could give you more detail but I also want to point out to you that setting rates for DR&R is unlike rate setting for almost all other aspects of the pipeline. And I'll paint this brief picture for you: When setting rates you can quickly understand and document the costs of labor and of vehicles and materials and facilities and those sorts of things. DR&R is, however, a moving target. The RCA is obliged to work with the stakeholders to determine what the actual cost of dismantlement, removal and restoration is expected to be, way out there at the end of the life of the pipeline, and then update that for rate making purposes on a regular basis as tariff changes and rates are requested. And it's the only body that's in a position to do that properly.

There are four big changes proposed by the committee substitute. First, our jurisdiction over DR&R of pipeline facilities is practically removed. Second, by not allowing the Commission to consider the amount of DR&R collected in interstate rates of a pipeline that transports both within the State and for export, the bill makes it impossible for the Commission to assure that intrastate rates include just and reasonable amounts for DR&R. Third, it removes but does not resolve a number of ambiguities in Alaska statute 42.06.400.

Mr. Chairman, the Commission's jurisdiction, right now, is defined in AS 42.06 and conforms to that of other regulatory agencies. The legislature intended that the Alaska Pipeline Act allow an objective, non-political Commission to have broad regulatory responsibility. AS 42.06.245, one of the portions of the Act scheduled by this proposal for change says, "nothing limits the powers of the Commission set out in this chapter except to the extent they are preempted by federal law." When considering the passage of 42.06.245, Senator Groh and his colleagues, the framers, members of the legislative committee that proposed the

Act, said, "the state attempted to regulate to the maximum extent possible but would have neither the power nor ability if preempted by federal law."

Mr. Chairman, I'm going to conclude here by addressing the issue of fiscal clarity. I talked about it a minute ago with respect to our work with FERC. One of the speakers before a previous jurisdictional oil and gas committee on May 1, representing one of the oil companies, made a statement that he supports this bill because it "helps correct many serious flaws that currently exist in the Alaska Pipeline Act." He went on to say, "these flaws are so significant, they need to be addressed to ensure investment in risky projects like the Alaska Natural Gas Pipeline." These are popular subjects to discuss, Mr. Chairman. I'm going to suggest to you that I can probably convince members, if there's sufficient time and interest, that it performs not that objective. It makes cosmetic improvements, some of which are helpful, but ignores a number of other improvements that we, with the cooperation of industry, would like to work on in the interim and recommend as consensus legislation to the legislature and the Governor for competent treatment next year. It creates a huge amount of uncertainty for others.

I want to give you an example on this certainty: In the last year and a half or so, particularly earlier when the Alaska gas producers pipeline team was seriously investing in the feasibility of an Alaska gas pipeline, in frequent presentations, they pointed out that four criteria were essential for a gas pipeline. One was federal enabling legislation that would enable any competent, qualified party to come in and apply for such a permit – not just the earlier franchisee, quote/unquote the Foothills group. Number two, the proposed that federal incentives were required and, as we speak tonight, in Congress those incentives are being considered, namely a floor price guarantee for gas, etc. Thirdly, the producers asked for certainty in Canada, on rights-of-way, particularly with regard

to First Nation issues and aboriginal rights-of-way and tonight, those are still issues. Fourthly, they requested fiscal certainty in Alaska.

In my career with the oil industry over the years with groups like the Resource Development Council and others, we often discussed fiscal certainty Mr. Chairman. We never discussed fiscal certainty for some in the industry at the expense of others. We also discussed frequently regulatory reform and improvement - streamlining. Earlier this evening, on the floor, members were talking about streamlining the regulatory process. The effect of this bill would be to un-streamline the process and provide some regulatory certainty for a few at the expense of others.

Mr. Chairman, I would ask you "Is the Pipeline Act perfect"? And I would offer an answer, "No". It can always be improved. Over the years since it was created there have been a number of amendments put in. Some provide some ambiguity that we have to deal with at the Commission level. So there are changes and improvements that can be made - but not this type of change. One might ask, "Is the RCA process itself flawed?" I would submit myself, Mr. Chairman, that as an advocate of this ... that it is not, for reasons I could go into at your pleasure, in the public interest, in order to support those one has to advocate that the system is broken. And I would testify to you tonight that, as an objective new member coming in about three months ago and evaluating the process, I would like to report to you tonight that every single employee -- that the commissioners on this Commission have been doing precisely the work that you expect them to do in an objective, non-political way, making their decisions based on the record before them that all of these distinguished opponents and advocates bring before us every day.

Thank you Mr. Chairman.

*[Chair announces his intention to hold questions until later tonight or Friday.*

*Requests next to testify.]*

**Gerry Gallagher:** Good evening, my name is Gerry Gallagher. I'm the government relations manager at ConocoPhillips. I'm pinch-hitting tonight. Graham Vanhagan, our vice president and general counsel who was here during the day, unfortunately needed to return to Anchorage so I will do the best I can.

I'd like specifically to thank Rep. Fate and Rep. Dahlstrom for their efforts to put these issues on the table and help us all discuss them. I think that discussion has brought us to the Resources Committee CS that I'd like to talk about tonight.

ConocoPhillips supports the committee substitute. We were prepared to spend a few minutes and discuss the main sections of the bill with you but the State has already done that, in detail, earlier today and we don't need to take up your time this evening to do that. However, given some of, what we believe are some of the general misconceptions about the bill and some of the views that have been expressed publicly, I do want to take just a moment in our testimony and clear up what we believe are misunderstandings. So, for the record, I just want to say that we do not believe that this bill overturns RCA decisions. This bill looks to the future. This bill does not legislatively approve TAPS settlement agreements. And this bill does not remove RCA jurisdiction over establishing intrastate pipeline tariffs. Rather, this bill is about certainty and clarity of the RCA's process. It's about creating an atmosphere in the future where companies both big and small are clear about the rules they explore and operate under and transport oil and gas. We've also heard that this bill, in some way, seeks to negatively impact the independents, the new entrants, the smaller companies and our business in Alaska – and that is absolutely not true. ConocoPhillips very much promotes the entry of

new players, smaller companies, new people and existing players in Alaska. This is evidenced by our efforts recently, our work with companies like Anadarko, Encanada, Forrest Oil, Windstar, Pioneer – they're our partners in projects on the North Slope and Cook Inlet; exploration projects and development projects; projects on State and Federal land.

I do want to make a couple of limited comments about a few portions of the bill because it did change in this CS.

Section 1 is a new section proposed by the Administration further clarifying the role of the Commissioner of Natural Resources as being responsible for insuring compliance with pipeline leases. We believe that's consistent with the intent of earlier versions and we support it. We agree with the Administration that this current version does not leave gaps in RCA in state jurisdiction of the pipeline.

The other amendments proposed by the Administration in Sections 2, 3 and 4 are also acceptable to ConocoPhillips.

I do have a few brief comments on Section 6. Sometimes we end up in litigation. And litigation sometimes ends up in orders and judgments that are due with interest. The interest rate that applies to judgments under the Pipeline Act had always been about the same rate that's been applied to other judgments in the State. There was a legislative decision in 1978 – the interest rate was a legislative decision in 1978 when the legislature wrote that section of the Act, and we believe the 1997 tort reform amendments also changed the applicable interest rates on Pipeline Act judgments. However, at this time, at the RCA, it is being argued that the interest rates on the Pipeline Act Orders were not changed. The amendments originally proposed in earlier versions of this bill, made it clear that the legislature did not single out pipeline companies for different treatment from every other

business entity. In other words, the rate in the other versions was exactly the same as those rates paid in other judgments that are issued by the State. The amendment proposed in this version, I'm talking about page 6, section 6, the amendments proposed in this version don't quite do that. They impose a different rate. The rate imposed here in this version is 5% above the federal rate and the payment mechanism is also being changed. We as ConocoPhillips need to understand that amendment – we just saw it today as you did in the CS – and how that would impact our business, and we're doing that now. But, I want to emphasize that ConocoPhillips supports the Recourse Committee CS that is before you and urge you to move this bill.

Thank you.

*[Chair again requests questions be reserved to later. Brief at ease. Chair announces that a Mr. Decker has signed up to testify and that he's aware that Mark Hanley and others also want to testify and will be allowed to do so.]*

**Jim Decker:** Thank you Mr. Chairman for the opportunity to testify before you. I'm Jim Decker and I am Senior Counsel for BP Pipelines (Alaska).

At the outset I would note that Al Bolea, President of BP Pipelines Alaska, planned to testify before this committee earlier today. Unfortunately, a prior out-of-state commitment forced him to leave the state before he had the opportunity to testify. This committee has Mr. Bolea's apologies and me to testify in his place.

BP supports HB 277 because it will help to provide the certainty and clarity needed to invest in the infrastructure necessary for continued oil and gas investment in Alaska. Infrastructure, like the long-lived Trans-Alaska Pipeline System, is the backbone of the oil and gas industry, and of this State. The bill

provides a more efficient State regulatory framework by reducing the degree of overlapping and redundant agency oversight, and ensuring the right regulatory skills are brought to bear.

House Bill 277 helps facilitate three very large business priorities for BP— priorities that will have enormous benefits to Alaska and Alaskans. Let me briefly describe them to you:

First – Preparation for the next agreement on TAPS tariffs: The current tariff agreement for TAPS is open for renewal negotiations effective January 2007. The Administration has asked the TAPS owners to reopen negotiations now. A new agreement will set the stage for future oil transportation on TAPS. For these new tariff negotiations to be meaningful and productive, all parties must be certain that the agreement will be durable -- that it cannot be rescinded or undone at some point in the future.

In today's world, certainty does not exist due to deficiencies in the Alaska Pipeline Act. Those deficiencies preclude meaningful dialog between the TAPS Carriers and the State, in spite of the State's and our strong desire to reach a new tariff agreement.

When it was first introduced, HB 277 contained provisions that addressed this specific deficiency, and I would encourage this committee to ensure that the legislation ultimately passed provides certainty that a tariff agreement with the State of Alaska is of lasting value; that it cannot be changed arbitrarily at the behest of those who would opportunistically seek to better their position as Tesoro and Williams are doing in challenging the existing tariff agreement. Plainly put, we want to ensure that a deal made today will remain a deal tomorrow and for the full term of the tariff agreement. Also, just to be clear, the legislation initially, and